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**PROVIDING STANDARDS FOR THE ISSUANCE OF
PASSPORTS AND FOR OTHER PURPOSES**

HEARINGS
BEFORE THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH CONGRESS

FIRST SESSION

ON

H.R. 9069

**AND OTHER BILLS RELATING TO THE ISSUANCE
OF PASSPORTS**

AUGUST 5, 11, 12, 18, AND 19, 1959

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PASSPORT LEGISLATION

WEDNESDAY, AUGUST 5, 1959

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, D.C.

The committee met, pursuant to call, in room G-3, U.S. Capitol, at 10:45 a.m., Hon. Thomas E. Morgan (chairman) presiding.

Chairman MORGAN. The committee will come to order.

We meet in open session this morning on passport legislation. We have before us a number of bills that have been introduced. I think perhaps the first bill was H.R. 55, introduced by Mr. Selden. There are several bills similar to the Selden bill, introduced by Messrs. Burleson, Fascell, Fountain, Pilcher, Adair, Bolton, Chipfield, Jackson, Judd, Merrow, Hosmer, Gubser, and Rogers of Florida.

We also have a bill introduced by Mr. Hays, H.R. 8329; a bill introduced by Mr. Bentley, H.R. 7006, H.R. 7315, introduced by Mr. Collier, and a bill introduced by Mr. Curtis of Missouri, H.R. 5455.

We have before us a staff memorandum prepared by Mr. Hill of the staff, and we also have provided copies of the Senate bill and a bill by Mr. Walter which have not been referred to the committee. Congressman Walter's bill is being considered by his own committee.

Our witness this morning is the Honorable John W. Hanes, Jr., Administrator of Security and Consular Affairs, Department of State.

Mr. Hanes, if you have a statement, you may proceed, sir.

STATEMENT OF HON. JOHN W. HANES, JR., ADMINISTRATOR, SECURITY AND CONSULAR AFFAIRS, DEPARTMENT OF STATE

Mr. HANES. Mr. Chairman and members of the Foreign Affairs Committee, we are grateful to have the opportunity to appear this morning before this committee to testify about passport legislation and particularly with regard to our belief that there is an urgent necessity for legislative action to deal with the problems of passports for dangerous American supporters of the international Communist movement.

Our recommendations are necessary because of a present lack of legislative authority in this field as pointed out last year by the Supreme Court, primarily in two decisions.

In June 1958, in the *Kent*, *Briehl*, and *Dayton* cases, the Supreme Court by a majority of 5 to 4 said, in effect, that Congress has never given the Secretary of State the authority to deny passports to members or supporters of the international Communist movement, or even to persons whom he has specifically found are going abroad willfully and knowingly to engage in activities which would advance that move-

ment. The Court did not hold that it was unconstitutional to deny passports to such persons, but only that the Secretary lacked legislative authority to do so. The Court further said that any legislation giving the Secretary such authority must carefully protect the constitutional rights of citizens.

Since that time the administration has been consistently seeking the passage of such legislation by the Congress. The President and the Secretary of State have both reiterated the need for such legislation. Just over a year ago, representatives of the Department of State appeared before your committee to testify about the urgent need for legislation empowering the Secretary of State to refuse passports to certain supporters of the international Communist movement. At that time the administration suggested a comprehensive bill on passport matters, but we endeavored to make it clear to the committee that we were not suggesting that particular bill reflected the only possible approach to the outstanding problems.

Last year's hearings before this committee and before the Senate Foreign Relations Committee indicated there was some congressional preference for a measure dealing separately with the Communist problem rather than for comprehensive passport legislation. Indeed, this committee reported out and the House passed such a bill in the closing days of the last Congress. It was not acted on by the Senate. We still believe a comprehensive measure is ultimately desirable. We fully agree, however, that the critical problem today is to remedy the total lack of legislative authority to deny passports to really dangerous participants in the international Communist conspiracy. In messages to the Congress last year, both President Eisenhower and the late Secretary Dulles underlined the danger represented by this legislative gap which makes legislation in this field essential. Accordingly, the Department has strongly supported such specific remedial proposals now before the Congress. These represent what we believe is the minimum required in the light of the present and continuing danger to our national security.

Mr. Chairman, this committee has the responsibility constantly to consider and to review all aspects of our foreign policy. There is, therefore, certainly no group which understands more clearly than this committee how pervasive and total is the hostility and the menace of international communism.

The late Secretary of State Dulles, in his characteristic terse manner, said that international communism "seeks to unify and harmonize the world by gaining control of all national governments." That basic objective was sought by the Soviet leadership in the days of Lenin, and it has in no way been altered by any of the changes in Soviet leadership down to the present day.

One of the greatest dangers posed by international communism is the full awareness both of its leaders and its followers that they are engaged in a total war with the rest of the world. They wage this war with an unswerving single mindedness of purpose. They wage it in every way they dare, politically and diplomatically, and economically; and they do not hesitate to wage it secretly and subversively.

International communism maintains in every foreign country, and particularly in the United States, a vast well-trained, well-financed subversive organization solely devoted to winning that war. This

organization is truly international; its worldwide activities are controlled and centrally directed with ruthless efficiency. Some members of that organization hold American citizenship, but their allegiance is not American, and their loyalty and service is to international communism.

Communication and personal contact are essential to the effective operation of any such complex organization. When, in addition, it is directed from abroad, this becomes doubly important. It requires travel—travel by the leaders and travel by those who carry their messages and their instructions, and by all the others whose activities are necessary to keep the apparatus operating.

Some travel and personal contact would undoubtedly be required even if this whole organization were operating quite openly and legally. Obviously, however, it becomes even more important because so many of its activities must be both secret and illegal. Those who engage in such activities usually fear and avoid regular communications for obvious reasons, and instead use personal assignments and personal discipline. Such a conspiracy can operate successfully only so long as it can maintain secure and rapid communications. It is a basic rule of Communist practice to communicate by word of mouth rather than in writing and to avoid the usual communications methods. If their vast personal communication network is impaired, their operations are rendered less effective and the whole conspiracy is placed under a serious handicap. We believe it is a handicap which we should impose on it to the limit of our ability; and we certainly think that we should not be required to facilitate its communication.

Our weapons against Communist subversion in this country have been a closely interlinked set of techniques. They have included penetration of the conspiracy and constant surveillance. Always, to the extent we could achieve it by passport and visa and immigration regulations, they involved denial to the conspirators of free movement in and out of the country and thereby of easy and satisfactory communications.

The loss of our ability to stop American members of the Communist apparatus from getting passports has blunted the other weapons we have against the Communist conspiracy. For example, our success in preventing the entry of foreign Communist agents and couriers with their financing and instructions from headquarters becomes rather hollow if American members of the apparatus can travel freely out of the country. Similarly, the most successful penetration of the domestic Communist apparatus by agents of the United States is rendered much less useful if the persons can evade observation for extended periods by traveling abroad, probably behind the Iron Curtain where we can hardly expect to know what they are doing.

The Communists have invariably stepped up their activities whenever we have let the bars down. At one time the dangerous members of the conspiracy, if they had to travel abroad, had the alternatives only of doing so illegally without a passport, or of resorting to fraud and falsification to get passports, and thereby exposing themselves to criminal prosecution. Today an American Communist does not have to resort to fraud—there is no incentive for it. He may get a passport, in his own name, on his own birth certificate, with

his own picture. He can require his Government to legalize and assist his travels. This is the facilitation he wants and needs.

I would like briefly to try to put the problem of control of Communist travel in proper perspective. For the 2 calendar years preceding the Supreme Court decisions of last summer, over a million passports were issued or renewed. Out of this group, 51 were initially and tentatively turned down because of alleged affiliation with the Communist movement. These individuals were afforded access to an elaborate hearing and appeal machinery. Indeed, in the entire 6-year period since that machinery was established in 1952, the Secretary of State—and it must be the Secretary personally—finally denied passports on Communist grounds to only 15 persons after they had exhausted their administrative remedies. Some others were granted passports after hearings; and some did not contest the Department's ruling.

I think that these figures concerning the number of Americans whose passport privileges were actually curtailed by the Department's Communist regulations are very revealing; but obviously they do not represent the scope of the problem posed by the travel of Communists.

When these regulations were in effect, most of the really active Communists refrained from applying for a passport. The few who did apply were usually stopped at the threshold, because they refused to supply the Department with a sworn statement concerning their current and past affiliation with the Communist Party. There were just over a hundred such cases in each of the calendar years 1956 and 1957. Most dangerous Communists are equally unwilling either to expose their party connections or to run the risk of a perjury indictment.

There can be no doubt about the deterring effect of our regulations and the affidavit requirement. For, since the Supreme Court decisions of last year, a number of old-line, dedicated Communists have applied for and have had to be granted passports.

The objectives of the legislation we need are rather simple. We need legislative authorization for the Secretary of State to deny passports (as appropriate) to persons who are presently engaging in activities knowingly intended to further the purposes of the international Communist movement. This authority should be based on congressional findings as to the danger to our country inherent in those purposes.

You will notice that I spoke of people who are engaging in activities and that I further said presently engaging. We think both these matters are important.

We do not want authority to restrict the movement of people who hold political, social or economic opinions which are not of the "orthodox American variety."

We seek only the authority to deny passports because of a person's present knowing engagement in activities for the purpose of advancing the Communist movement. We do not seek authority to deny passports to American citizens who are not today a danger to our security, even though at some time in the past they may have supported the Communist conspiracy. We do believe, however, that present membership in the Communist Party, or present activities under party discipline or under the direction or control of the Communist movement, should be considered as important evidence of furtherance of the

international Communist movement. When a person is knowingly engaging in such activities, he should carry the burden of demonstrating clearly that he will not engage in such activities while abroad. On balance this is fair, since the Department first has to show that the person is knowingly engaging in such activities.

A person's past actions alone, of course, should not disqualify him from receiving a passport, although naturally they cannot be entirely ignored in assessing his present and probable future actions.

If a person does come within these carefully defined categories, the Secretary of State should be able to deny him a passport without demonstrating the specific harm he would do on a specific future trip. Indeed, at the time of application, a Communist may have no specific trip or mission in mind, or he may not receive his orders until long after he receives his passport. The passport, however, once issued, remains valid for 2 years, renewable for 2 more.

As a general rule, we cannot show in advance what a dedicated Communist is going to do on a particular trip abroad. We may not find out for many years, if ever. Communists do not tell us on their passport applications that they seek to subvert us. We may have some indication what a particular Communist intends to do abroad, but this is the exception rather than the rule. The fact is, the more nefarious his purpose—the more important his mission—the less likely we are to know about it; and even if we do know we would, in all probability, not be in a position to document it for the open record. We must be able to anticipate harm to our foreign relations and our national security. The action we take is and should be preventive, but never punitive.

This brings up one other essential of passport legislation which is often misunderstood, and that is the necessity for the Government to be able to utilize confidential information, under carefully controlled circumstances, as part of the basis of its decision.

I would like to make very clear that in our opinion any legislation purporting to deny passports to Communist supporters would not achieve that purpose if it entirely prohibited the Government from utilizing confidential information. We certainly do not seek legislative authority to rely absolutely on confidential information, or to utilize it so as to preclude an opportunity for the passport applicant to rebut it. On the other hand, our experience and careful analysis of past cases has shown that almost without exception dangerous cases in the Communist area involve some confidential information. The reason for its being confidential is almost always in order to protect the investigative source. Indeed, the more recent and meaningful the information is, the more likely it is that it has come from current investigative sources within the Communist movement.

The Government has an overriding interest in maintaining the security of these investigative sources and methods. Of all the weapons which we have against the Communist conspiracy, our knowledge of its current operations is certainly the most important. If faced with the unpleasant choice of exposing and thereby destroying a valuable and continuing source of such knowledge, and issuing a passport to an individual member of the conspiracy, the Government would have no alternative but reluctantly to issue the passport as the lesser evil.

I do not mean to imply that confidential information comprises a major, or even a very large part of any total case. It almost never does. But the part it does play is often vital in relating the separate parts of the case.

Legislation designed to prohibit passports to Communist supporters but which would prevent us from utilizing any confidential information whatsoever by requiring full confrontation would, we fear, generate the dangerous illusion that the travel of Communists was being controlled, when actually it would not be. Such legislation would, in effect, guarantee the most dedicated and dangerous Communist an absolute right to travel.

The situation is similar with regard to highly sensitive information obtained from foreign sources of our own diplomatic and consular representatives abroad. Our foreign intelligence depends to a great extent upon close cooperation with other friendly governments and we cannot afford to prejudice these arrangements.

However, we have not operated, nor do we seek to operate, in an unrestricted manner in this field. Unless the full disclosure of information and the sources thereof would, in the opinion of the Secretary of State, have a substantial adverse effect upon the national security or the conduct of foreign relations, then the Department would either disclose both, or not rely upon the information. Under existing case law, there must be findings of fact by the Secretary of State and these findings must state the extent to which they are based upon confidential information, and must set forth specifically the reasons why such information cannot be fully disclosed. We think this is wise and should be continued. Under such requirements, the Secretary could hardly, even if he were so disposed, render a decision based on unsubstantiated rumors or gossip.

Moreover, we are suggesting a further significant step to safeguard the interests of the individual applicant. We feel, after careful consideration of the details of past cases, that the Department can and should provide the passport applicant with a fair résumé of any confidential evidence which cannot be disclosed fully. In most cases, this would mean giving him everything except the identity of the source. The applicant would then have due notice of the points in issue and would be given an adequate opportunity to rebut this information.

I believe that when the Secretary of State asserts that he cannot spread certain information on an open record; explains with as much particularity as possible the reasons of national security why he cannot do so; furnishes a summary which he certifies to be a fair summary of the information; and makes specific findings of fact, we should be able to rely on the Secretary's integrity and accept his statement.

Lastly, we feel there should be legislative approval of a reasonable oath requirement as to present or near-past Communist Party membership. We think it desirable to have a clear expression of congressional approval on this subject.

The oath requirement under our now defunct regulations was very helpful to us. So long as the requirement is reasonable and pertinent, we do not believe that such an affidavit infringes unduly on the rights of anyone seeking a passport. I am not speaking of any so-called

test oath. The affidavit would not have to be answered in any particular way in order for the applicant to receive a passport. Nor would any particular answer cut short the administrative procedure open to him. His answer would be merely another factor in the consideration of his case on its merits.

I would now like, with the committee's permission, to comment briefly on some of the bills which are before you.

H.R. 55 (Selden bill) :

H.R. 55 and a number of other identical bills before the committee are in the same form as the bill which passed the House on August 23 last year.

The Department is in full accord with the objectives of H.R. 55. Representatives of the Department appeared before this committee twice last year in connection with the formulation of a narrow bill directed at the problem of Communist travel. The bill which this committee reported out, H.R. 13760 was, in the Department's opinion, adequate to meet the problem. However, the bill was amended on the floor to provide that the judicial review established by the bill should be "on the record." The Department had previously advised the committee, when consideration was being given to such a provision, that it would seriously reduce the effectiveness of the bill in accomplishing the purpose intended, and would place the Government "in the hopeless dilemma of revealing confidential information and sources, or, failing to do so, of issuing the passport."

H.R. 55 contains this same provision which is the only aspect of the bill with which the Department disagrees.

The Department, in commenting on H.R. 55 earlier this year proposed certain revisions which we think would strengthen it. We also suggested the addition of rather complete administrative review provisions to spell out adequate safeguards of the citizen's constitutionally protected right to exit the United States.

If the committee decides that only the most minimum provisions should be enacted, and a bill should be kept to its simplest terms, the Department would endorse H.R. 55 if it were amended—by deleting three words—to conform to the bill unanimously reported by this committee last year. We believe that this bill would give the Department the legislative authority found lacking by the Supreme Court in the *Kent-Briehl* and *Dayton* cases.

H.R. 7006 (Bentley bill) :

H.R. 7006 was introduced after the Department submitted its comments on H.R. 55. This bill contains all of the suggestions the Department made in those comments.

We believe that H.R. 7006 would also give the Department the legislative authority it needs.

We believe that this is a good bill. We strongly support it and we hope the committee will report it favorably to the House.

I understand the Department of Justice forwarded its technical comments on H.R. 7006 to the committee in mid-June. However, I am sure the committee would be interested in a current statement of the position of the Attorney General on passport legislation.

The Attorney General has advised me that the Department of Justice shares the view of the Department of State that the enactment of legislation along the more comprehensive lines of the administra-

tion's bill in the last Congress would be preferable. However, he agrees with us that our most urgent current problem in the passport field is the lack of congressional authority to deny passports to those persons in situations where information establishes that their travel abroad would constitute a real danger to the United States.

Accordingly, if the Congress decides to enact legislation dealing with this narrower problem, the Attorney General informed me that his Department joins with the Department of State in supporting the provisions of H.R. 7006 and believes it would supply statutory authority found lacking by the Supreme Court in the *Kent-Briehl* and *Dwyton* cases. He continues to feel, as he suggested, that certain minor technical revisions of the bill would be helpful.

H.R. 8329 (Hays bill):

H.R. 8329 was only recently introduced and the Department received a request for comment last Friday. Our comments were forwarded to the committee this morning.

Basically the Department feels that this bill would not provide effectively for the denial of passports to Communist supporters, and therefore is inadequate to counter the existing danger. We also feel that, inasmuch as it obviously is a comprehensive passport bill, it would, by the omission of certain important provisions, severely restrict the existing authority of the Secretary of State to act on considerations of foreign policy in the passport field.

Section 103 of H.R. 8329, for example, appears to enumerate certain sole grounds upon which passports could be denied. This enumeration would by omission severely restrict the existing authority of the Secretary of State to act on individual passport cases on the basis of reasonably anticipated harm to the foreign relations of the United States.

Section 103(a)(3) of H.R. 8329 lists three rather extreme grounds on which passports may be denied on national security grounds. Naturally, we agree with these three grounds, although we feel that the Department presently has authority to deny passports in any cases where there is substantial evidence of such serious activities. We believe, however, that the exclusion of all other grounds would make it unlikely that even dedicated and known Communists could be refused passports under the provisions of this section.

An advance showing that a particular person would, when abroad, engage in one of the narrowly defined extreme activities listed in this section would be impossible in almost every case, for reasons I have indicated earlier in this testimony. We rarely have reliable information even as to where a Communist is going, much less as to what he specifically intends to do when he gets there. Our experience teaches us that such people frequently misrepresent the places they intend to go, as well as the true purpose of their travel. Furthermore, under section 201 of this bill the Department would not even be able to inquire of the applicant about the purpose or length of his proposed travel.

Section 201(c)(2) of H.R. 8329 specifically prohibits the Secretary of State from asking an applicant for any information with regard to membership in any organization which is not finally registered under the provisions of the Subversive Activities Act of 1950. Of course, as the committee is aware, no organization—including the

Communist Party—is yet included in this category because of protracted litigation. The Department doubts that reliance on this provision of the 1950 act—which has not yet become effective and appears unlikely to do so in the near future—is the best way to meet the Communist passport problem in 1959.

A difficult problem is posed by section 307 of H.R. 8329, especially subsection (d). This provision would require the judicial branch of the Government to substitute its judgment for that of the executive branch in determining whether the disclosure of particular information would have a substantially adverse effect upon national security and foreign relations. The courts have long held that in such areas the executive branch has special competence as well as broad constitutional authority, and the courts should be hesitant to trespass. The Department fears that this section might effectively nullify those desirable provisions of H.R. 8329 which recognize the necessity for the Government to rely on confidential information under some circumstances.

There are many provisions of H.R. 8329 with which the Department is in agreement, and there are a few other technical objections which are set forth in greater details in our letter of comment. The Department's overall opinion, however, is that the bill would not be effective in meeting the present danger to the national security, and that it would not supply the statutory authority found lacking by the Supreme Court in the *Kent-Briehl* and *Dayton* cases.

H.R. 2468 (Collier bill) : H.R. 2468, on which the Department recently submitted views to the committee, appears identical with H.R. 7315.

The Department is in accord with the apparent objectives of this bill. We feel that H.R. 2468 would probably meet the problems we face in the Communist area. The Department believes, however, that its provisions are more restrictive than is required.

Furthermore, the bill proposes to incorporate into statute provisions of our passport regulations which were not invalidated by the Supreme Court. The Department finds no objection to this; however, in the last Congress both this committee and the Senate Foreign Relations Committee indicate a preference for adopting a narrow approach to the Communist problem. We would not wish to prejudice the likelihood of getting remedial legislation in that area by insisting on legislative recognition of any broader authority at this time, even though it would be ultimately desirable.

We have often pointed out to the Congress that we do not believe there is only one magic formula to our legislative needs in this area. However, we think provisions along the lines of H.R. 7006 are more adequate both from the standpoint of the individual and the Government.

H.R. 5455 (Curtis bill) : There are many features of this bill with which the Department is in agreement. Again we believe H.R. 5455 would probably provide adequate authority in the Communist area, but the bill includes provisions that are much broader than this. In fact, certain provisions of the bill seem to go beyond the comprehensive legislative endorsement of authority we requested in the administration's bill submitted to the last Congress. If this type of comprehensive bill is to receive consideration, the Department would prefer provisions along the lines of those formerly proposed.

Additionally, H.R. 5455, section 7, would create a U.S. Passport Service. The Department is firmly opposed to this feature of the bill. The Department feels strongly that the Secretary of State should be permitted to organize his Department as he deems necessary. It has been longstanding executive branch policy, as well as the recommendation of the Hoover Commission, that Department heads should not be deprived of authority to determine the organization of their respective departments.

Section 7 of H.R. 5455 is defective in a number of other ways besides being a violation of sound administrative practice, as the Department has pointed out in our detailed comment upon the bill.

I have tried to make clear the Department's earnest desire to establish a fair administrative process by which we can achieve a balance between a danger to the security of the United States and the citizen's right not to have his freedom of movement unreasonably restricted.

We seek only the means to protect the United States by denying passports to those relatively few citizens who are knowingly engaged in the activities of the Communist conspiracy, and whose travel abroad would thus be a danger to the security of the United States.

If there are any questions, sir, which the committee would like to ask, I have with me Colonel Raymond, who is the Acting Legal Adviser of the Department of State. He and I would be more than happy to try to supply any answers that you may be interested in.

Chairman MORGAN. Thank you, Mr. Hanes, for your statement. Since this is your first appearance before this committee, in your present capacity, let me remind you that we operate under the 5-minute rule. That means each member has 5 minutes within which to ask questions. I am sure many members of the committee want to ask questions.

Mr. Hanes, last year when Mr. O'Connor was here, he testified that immediately after the June 6, 1958 decision there were a great number of new applications from known Communists. I think he mentioned the number 70.

That was July 17, his first appearance before the committee. Has that number of 70 increased greatly since last July?

Mr. HANES. I am afraid it has, sir. We have not kept exact records because we cannot deny a passport on grounds that a person is a dangerous Communist; and even though there may be some affiliation, we don't attempt to evaluate how dangerous this affiliation is, for this reason: The people we do know about are usually the ones who have a long record or history that we have available to us, or often people that we knew about because they had previously applied for passports and we had at that time made some investigation.

However, the answer to your question is very definitely "yes," insofar as the number of people who under our former regulations we would have examined very closely, is concerned. This number has continued to rise at a steady and almost uniform rate since the time Mr. O'Connor testified, and indeed right up to the present moment.

Chairman MORGAN. I am reading from Mr. O'Connor's testimony, page 3, and he says, "If we do not get any kind of legislation, we will have to issue passports to those 70 people." Have we issued passports to some of these people?

Mr. HANES. I would say as far as those 70 people go, I believe we issued passports to every one of them. Since that time the people

to whom I am referring who would formerly have been looked at—not necessarily denied, but looked at very carefully—and some of whose passports would have been denied under our former regulations, all of these people have come in, have applied for, and have been given passports. There are unquestionably a few who haven't yet gotten them because they have just applied in the last few days, but essentially speaking, anybody in this group about whom the only information we have relates to Communist affiliation, has received a passport.

Chairman MORGAN. Mr. Hanes, without singling out any individual case, do you believe any one of these 70 people who were issued passports who went abroad and used the passport in the past year could bring a certain amount of danger to this country in their activities?

Mr. HANES. I do believe so, sir, and more than that, I believe that the cumulative total of those in this category who have received passports and have gone abroad could bring danger to this country.

I feel one must consider not only the individual case. Sometimes in an individual case we may know a little; but, as I tried to point out, usually as to what a particular individual does abroad, once he gets abroad, it is very difficult if not impossible for us to demonstrate.

Sometimes we know some of the public things he does as reflected in public statements he may make. The often much more dangerous non public things that he does we have no way of knowing about.

So the thing that worries us is not only the individual who goes abroad, but also the cumulation of individuals.

At the present moment any member or any supporter of the American Communist Party who wants a passport can have one for the asking, as long as he isn't ineligible on some other grounds such as being a fugitive from justice. So the number of them who travel abroad is up to the Communist apparatus to set, not to us. The outside limits of this volume is for them to decide. We do believe this represents a danger to our security, sir.

Chairman MORGAN. Thank you, Mr. Hanes.

Mr. Chipfield.

Mr. CHIPFIELD. Thank you, Mr. Chairman.

In my judgment, Mr. Hanes, you have made a very constructive statement. I have introduced a bill on this subject. I believe it is absolutely necessary to pass legislation to meet this problem. I hope that we will adopt a bill that will meet it head on and give you the necessary legislation to protect our own security.

On page 10 in the third or fourth paragraph you say:

If it were amended by deleting three words, to conform to the bill

—what are those three words?

Mr. HANES. They appear in line 11, page 3, H.R. 55, "on the record." In other words, the present sentence reads.

A denial of a passport pursuant to section 6 of this Act shall be subject to judicial review on the record in the district courts of the United States.

Now that provision is a little obscure in its meaning but we interpret this as very possibly effective negating those sections of the bill which permit us to have some utilization of confidential information.

Mr. CHIPFIELD. You want to be able to use some confidential information—you feel that is necessary in order to see that justice is done in these matters?

Mr. HANES. Under very carefully controlled circumstances, sir, yes, we do feel it is essential.

Mr. CHIPERFIELD. Thank you very much, Mr. Chairman.

Chairman MORGAN. Mr. Zablocki.

Mr. ZABLOCKI. Thank you, Mr. Chairman.

I want to commend Mr. Hanes for a fine statement. I feel legislation of this type is necessary and should be given early consideration. I do not have any questions at this time.

Chairman MORGAN. Mrs. Bolton.

Mrs. BOLTON. Thank you, Mr. Chairman.

I have felt right along that the first step that was very important was the passage of some bill which would prevent the Communist intrusion into our whole way of life.

I believe, however, there is a further bill exceedingly necessary which we might not take up until next year, for a careful go-over of everything that has to do with the passport end of our State Department.

I think we should know far more than we do about the whole matter of passports. There seem to be gaps in various areas of it that we should be filling in. I like your method of procedure on this very much, Mr. Hanes, taking up each bill and giving us your analysis. It will save us a great deal of time and make possible discussions here in the committee that will be both timesaving and much more effective than they could have been without just such an analysis. I know Colonel Raymond has been very much involved in that and I want to thank you both.

Thank you very much, Mr. Chairman.

Chairman MORGAN. Mrs. Kelly.

Mrs. KELLY. Mr. Chairman, I would like Mr. Hanes to establish the scope of his responsibility as Administrator of Security and Consular Affairs.

Mr. HANES. My position, Mrs. Kelly, is actually established by statute. It was established by the Immigration and Nationality Act. I have the rank of Assistant Secretary of State. The act that established it provided that the passport and visa offices should be under the Bureau of Security and Consular Affairs, and such other activities as the Secretary may designate. He has since designated the Office of Security, the Office of Munitions Control, the Office of Special Consular Services, and the Office of Refugee and Migration Affairs as also to be under the jurisdiction of the Administrator.

It might be of interest to you, as Mr. O'Connor pointed out last year, that the term "security" in the title "Security and Consular Affairs" does not, and at the time was not intended, to refer to personnel security, which now also is under the Bureau; but to the security aspects of visa and passport matters.

Mrs. KELLY. To your knowledge, has there been any recommendation by the administration to blunt the Communist conspiracy other than the right to deny control of passports?

Mr. HANES. I did not understand the question, Mrs. Kelly.

Mrs. KELLY. Has there been any recommendation to any other committee to endeavor to blunt, as you said in your statement, the Communist conspiracy, other than the right to control passports? In other words, I am as interested in our domestic security as in the

international activities of the so-called Communists actively engaged in the overthrow of our Government.

To your knowledge, is there any other recommendation by the State Department to endeavor to identify these people here in the United States prior to the establishment of denial of their right to travel? In line with the Smith Act, to define treason as an activity in the Communist conspiracy, or anything like that?

Mr. HANES. Not insofar as the State Department is concerned.

Mrs. KELLY. They have recommended no legislation?

Mr. HANES. To the best of my knowledge, the State Department has not. I believe there may be recommendations by the Department of Justice and the Attorney General that would fall into that general field, because I know that there is a series of decisions of the Supreme Court that have pointed out various places where legislation was lacking; and I think there have been other proposals. I am sorry to say I am not competent, however, to know the details of most of those except in these areas that relate to our own activity.

Mrs. KELLY. Thank you, Mr. Chairman.

Chairman MORGAN. Dr. Judd.

Mr. JUDD. Thank you, Mr. Chairman.

Mr. Secretary, you have made a very splendid statement. In my book, the need for the right kind of legislation to control issuing of passports is demonstrated beyond any possibility of disagreement. The problem is how to get legislation that will do it adequately without interfering with proper use of passports. This is in a borderline field where there is a conflict between protecting the rights, the civil rights, of every citizen, as against the overall security of our country.

May I ask at the outset just what you meant when you said that word "security" in the title "security and consular affairs" referred to security with respect to visa and passport matters? I don't know quite what that means.

Mr. HANES. This is really a little history, Dr. Judd.

When this Bureau was set up by the Congress under the Immigration and Nationality Act, the word "security" was then meant to apply to the security of the United States, as it is protected by visa and passport regulations, visa regulations preventing the ingress of subversives to this country and, under the provisions of the Internal Security Act (which have not yet become effective) regulations preventing the egress of subversives.

Mr. JUDD. Rather than the question of determining whether a particular individual is or is not a security risk?

Mr. HANES. Personnel security is something that was put in the Bureau as an afterthought. It really had nothing to do with that particular term.

Mr. JUDD. Mr. Hanes, you have seen the suggestion made by some that perhaps we ought to have two types of documents, that American citizens wanting to travel could be given. One is our regular passport with which we not only certify a person is an American citizen, but with it goes the endorsement, the blessing and the protection of the United States.

Another document could be called a certificate of citizenship or some such name which would certify, "This person is a citizen of the United States," period, without any of the accompanying protection

and respectability that the possession of a passport gives. There would be nothing derogatory to him in the document, but others would know that he was denied a passport; he was given a certificate. He has a right to travel and the certificate gives him identity as a citizen, but any countries that admitted him would be advised ahead of time that they were doing it at their own risk, so to speak.

This would be a departure from procedures we have used in the past, but we ought to explore every possibility and I wonder if you have a comment to make on that?

Mr. HANES. Yes, Dr. Judd, I have indeed seen these suggestions and there are aspects of them that are very attractive. I think, however, in considering them, we should remember a couple of things. One of them is that in effect this would be a statement by the U.S. Government to its own citizens that they travel abroad on their own without the United States having responsibility for them, for what they do; in effect an admission that they could waive their right to protection and indeed part of their American citizenship by going abroad.

Now, we do not believe that either legally or in fact, even if the individual and the Government agree between themselves that that can be done, that a person can so waive part of their American citizenship.

If such a person went abroad, if he did things that were inimical to our foreign policy, he would be doing them as an American. If he got into trouble, if he got incarcerated, he would be an American citizen; I have little doubt that under such circumstances we—and the Congress—would both be requested by public opinion and would want in any event to go ahead and do anything we could about an American citizen.

This would be in effect a hunting license on some American citizens and I am afraid by implication could derogate the status of all American citizens.

I might also point out that while this solution would solve one of the problems that we are facing in this area, it would not solve the other problems to which I have referred. That is, the actual danger that we feel is posed to us by the operations of the Communist apparatus in this country and by providing the communications that are necessary to its existence. This would provide those communications; and there are many Communists who I am certain would go ahead and be perfectly happy to travel under such a circumstance, doing their jobs, and without regard to the moral stigma attaching to them.

Mr. Judd. I think you are right and I am for the stronger one, but if we can't get—as we have been blocked from getting in the past—the kind of adequate legislation we need, I hope you will pursue the possibility of something along these lines.

For instance, the 70 of whom the Chairman spoke. If you had adequate legislation of this sort, you could say, "Well, we deny you passports, but you have a right to travel as Americans so we give you a certificate of citizenship."

I don't think they would like to travel very much under that certificate because it would be an announcement to the world of lack of confidence in these citizens by the United States.

Thank you very much.

Mrs. BOLTON. Will the gentleman yield for a moment?

Chairman MORGAN. The gentleman's time has expired.

Mrs. BOLTON. I was just going to ask if at one time that was all we did have, a certificate, in the history of passports—please get that in.

Mr. HAYS. I hope that isn't coming out of my time.

Mrs. BOLTON. That is an interlude.

Mr. HAYS. You didn't mention the Fulbright bill. I suppose you object to it on substantially the same grounds that you object to some of the others, is that right?

Mr. HANES. Yes, sir, I did not mention it because it is not before this committee. Mr. Murphy commented on that to some extent before the Senate Foreign Relations Committee.

Mr. HAYS. I presume you want a bill, is that right? You are not up here engaging in an exercise of political demagoguery, are you?

Mr. HANES. I assure you we want a bill, sir, very much.

Mr. HAYS. Well, you don't think you are going to get a bill through the Senate of the kind that you want that mentions—the fact of the matter is, let me put this question another way. Don't you think you are on rather dangerous grounds defining the people that you can deny to as only members, or former members of the Communist party? Do you think that will stand up in court?

Mr. HANES. Well, I would not agree that that definition is a good definition, sir. I think that our definition that we have supported is members, former members or those acting under the discipline of the—

Mr. HAYS. The definition in my bill is "persons to whom the Secretary of State finds reasonable grounds to believe that their activities abroad endanger the United States." I am not wedded to the exact language, but what I would like to do is make it broader than merely "Communists" or "former Communist."

Mr. HANES. Well, sir, the question of how broad it is, as I said, really a question for the Congress to decide.

Last year we suggested, and we still feel that at some point comprehensive legislation in this whole passport area would be very desirable. If, however, the Congress wants to confine itself to the Communist issue, as we got the impression from our hearings last year was desired, we have tried to suggest certain provisions in that area alone—

Mr. HAYS. Well, this is a new Congress and there are a lot of people who were here last year that aren't here and there are a lot of people here who weren't here, and I get the feeling from the other body that there is going to be a comprehensive bill or no bill. So in that case I think we are just wasting a lot of time if we don't try to write a comprehensive bill.

I only threw mine in as a basis of a comprehensive bill to work on. There are plenty of things in it that perhaps the committee couldn't agree on, but I think if you are going to work on a bill we might as well take an exercise that is going to have some use.

Mr. HANES. Well, I certainly don't want to give any impression that the Department opposes a comprehensive bill, sir. We believe that such a bill would be a desirable thing. We have a feeling there are certain things that should be in any such comprehensive bill. The comprehensive bills that are presently before the Congress, in our opinion, are lacking in some of those things.

PASSPORT LEGISLATION

One of the problems in a comprehensive bill is that it must be comprehensive. In other words, anything that it omits the courts will then interpret as a specific congressional intent to omit, and if a bill says, "these shall be the grounds on which passports may be denied," then any grounds not included—

Mr. HAYS. Well, you don't think we shouldn't limit in some way the grounds? You don't think we should just say, "The Secretary shall deny a passport if he thinks it is all right," do you?

Mr. HANES. No, sir.

Mr. HAYS. There has to be some limitations of some kind.

Mr. HANES. I agree and they should be—

Mr. HAYS. The limitations may be debatable and certainly I wouldn't stack my opinions up against everybody else's, but I do think there have to be limitations defined and you will agree with it.

Mr. HANES. Absolutely, sir, and very carefully defined, because here we are in an area where there is a constitutional protection and in that case we think that both substantively and procedurally there should be complete and adequate guarantees of due process.

Mr. HAYS. Well, the only reason I mentioned what I did about the political aspect of it is—and I just make this statement—you don't need to answer it—it seems to me the administration is squeezing—and I give them credit for a very adroit operation—about all that can be squeezed out of the Communist issue. You come up with—you want to fight communism at home but you are going to entertain the top Communists down on Pennsylvania Avenue. If that isn't getting on both sides of the question, I never saw it. It is a smooth political operation and I just want that in the record.

Chairman MORGAN. Mr. Fulton.

Mr. FULTON. We are glad to have you here, Mr. Hanes. I believe you are doing a good job. Your method of setting up the comparisons among the bills presented to this committee has been an excellent start.

The question comes up as to the breadth of the bill. Actually a good bit of our trouble in the near future probably will be in the Caribbean area. Some people will carry a standard for one side or another in that area, and may want to carry a gun as well when they get there.

Now, under those circumstances, these people have no history of anything wrong in this country but they have a good idea of possible revolution that they think they want to carry out. They want to go for that purpose, with a passport that carries the full faith and credit of the United States behind it.

I am one of those people who last year had recommended that some difference in type of passport be considered. The question comes up that it isn't the passport that we should have the major question with, but it is rather something in the nature of a U.S. exit permit and a reentry permit. The basis of the proposed passport bills is that the past history and past actions are projected ahead and abroad to guess what that particular citizen might do to the United States if he were permitted outside the continental borders.

That raises this problem: If a man simply has an intent, can we then fasten future possible actions on intent? I am afraid under the Smith Act it has been clearly ruled that there are very strict limits on inferring action from intent or just thoughts, or ideas.

PASSPORT LEGISLATION

Suppose that we had a different system, that I wish you would consider and that is, you have a passport and an exit permit from the United States. Now, I don't see how the Government of the United States can control citizens' actions abroad, either practically or by its authority. They are in a foreign country and they are U.S. citizens acting under the laws of a foreign country. But there is something that would make these people wonder a second time and that is this:

If we, adopted the policy of requiring a U.S. reentry permit which a U.S. citizen would have to apply for, he could apply in advance before leaving our shores, and see whether he is prima facie going to get it, and if it wasn't given to him prima facie, he is on notice that he is going to have to prove it.

Then we have the U.S. citizen under oath at the point of reentry and at that particular time we have or can have an examination of him if he does not have a reentry permit when he applies under oath for a reentry permit.

My proposal would not derogate the U.S. passport, which I don't want to if we can help it. It also permits the U.S. citizen to travel under the U.S. Constitution, but it certainly protects the United States against this fellow getting back to do the work which he has learned abroad and prepared for abroad. If he lies he goes to jail for perjury and the plans are balked.

There is where the real crux of the matter to me is, that when the U.S. errant wanderer comes back he is then a dangerous citizen.

Query: Should we not then separate the question, not into various kinds of passports, but put our limitation on the permit of U.S. reentry when the man must then testify under oath? The U.S. law can then have a civil or criminal penalty in case he does not correctly describe his actions abroad and, secondly the U.S. authorities would get out of that inquiry an ability to find out what these citizens have been doing abroad. Do you see any merit in the idea?

That is all and thank you very much.

Mr. HANES. Yes, sir, I think it is an interesting suggestion and, of course, you are perfectly correct when you point out or infer the real problems we are facing in this field are the relatively recent developments of changing the historic nature of the passport into what is also an exit permit; and the Supreme Court actually considered that aspect of it as being now paramount, even though that is a relatively recent—

Mr. FULTON. My point then is, why don't we separate this policy from the actual U.S. passport and formalize it by adding on a U.S. reentry permit the individual must apply for?

Mr. HANES. I think it is a very interesting suggestion, sir.

Mr. FULTON. That is all, sir. Thank you.

Chairman MORGAN. Mr. Selden.

Mr. SELDEN. Mr. Hanes, let me also commend you for what I think is a very fine statement.

H.R. 55 to which you referred, of course, is identical to a bill that was threshed out by this committee last year after weeks of effort except the three words "on the record" were put in on the floor of the House.

When I introduced it, I introduced it in the form it passed the House last year, because we had a precedent both of passage in the

committee and passage on the floor of the House. I am anxious to get out a bill under which you people can operate, that can pass the Congress, and which will give the persons involved both administrative and judicial review.

I agree with you on the urgency of this legislation and trust the committee will act without further delay.

I have no questions, Mr. Chairman.

Chairman MORGAN. Mr. Adair.

Mr. ADAIR. Mr. Chairman, thank you.

Mr. Hanes, would it be fair to say that of the bills on which you have commented this morning, your first choice and by "your" I mean the departmental first choice would be H.R. 7006, and perhaps a second choice would be H.R. 55?

Mr. HANES. Yes, sir.

Mr. ADAIR. And if legislation in pretty much the form of H.R. 55 were eventually enacted into law, that you feel you could operate successfully within either that framework or the framework of H.R. 7006?

Mr. HANES. Yes, sir. If I might put it this way, it perhaps would be easier for the committee to understand our position—and again, if I may, I will eliminate this question of the three words which I have referred to, "on the record,"—if legislation along the lines of H.R. 55 were passed, we believe most of the other provisions that are in H.R. 7006 that we think would improve it somewhat, we could put out as a matter of regulation; so it is a question of whether the Congress desires itself to give legislative backing to these more detailed matters, including a spelling out of the administrative due process protection for the citizen, or to leave it up to the Department to put them in.

If we had a bill along this line, we would then by regulations bring the procedure closely into accord with what we have recommended in H.R. 7006.

Mr. ADAIR. And that procedure is actively contemplated now, if a bill similar to H.R. 55 should be the one?

Mr. HANES. Yes, sir. Our recommendation has merely been that, quite naturally, we prefer to have the maximum congressional backing for all of the things that we would, however, do to the best of our ability anyway.

Chairman MORGAN. Mr. Pilcher.

Mr. PILCHER. No questions.

Chairman MORGAN. Mr. Bentley.

Mr. BENTLEY. Mr. Hanes, I would like to review just for a moment the reference on page 12 to the Subversive Activities Act of 1950.

I understand about 4 or 5 days ago that the U.S. Court of Appeals told the Communist Party that it would have to comply with the Subversive Activities Control Act, which as I understand, among other things, would prevent Communist Party members from obtaining passports.

Now, I believe the Subversive Activities Control Board has already ruled on that basis three times and in both cases—in all three cases, the appeals court or the Supreme Court has sent cases back to the Board for rehearing.

I assume that the lawyers of the Communist Party will appeal this decision of the appeals court to the Supreme Court. So from a prac-

tical standpoint, do you see any end to the legislative maneuvering that the Communist Party could undertake to evade compliance with the Subversive Activities Act of 1950?

Mr. HANES. As a practical matter, sir, we certainly see no early end. I wish there could be.

Mr. Joseph Forer, who is the attorney for the Communist Party in this case, has already indicated that he does intend to appeal last Thursday's decision to the Supreme Court. It has been there before, and perhaps this will be the last time it goes, and perhaps there will be found another method to get it again through the whole process of litigation. It has been going on now for 6 years and, as I say, while we hope, we don't see any early end to it; and, of course, at the moment, as you know, the only organization even under petition under this act, until the courts have made a final ruling on it, is the Communist Party itself, and if that is finally upheld, then there will have to be moves, of course, which also will probably be contested in the courts in all of the other subordinate organizations which the Communist Party has increasingly used since 1948.

Less and less has the party relied on those who are technically members of the Communist Party. It has encouraged its people not to be members, to be anything but, to be in other organizations, and otherwise support them.

Mr. BENTLEY. Any reliance in any legislation on the provisions of the Subversive Activities Act of 1950 would not give you very much support in view of the possibilities of legislation ad infinitum.

Mr. HANES. At the moment, sir, we don't see that it would help us any at all.

Mr. HAYS. You mean litigation, not legislation.

Mr. BENTLEY. I said for any legislation to contain a reliance upon the provisions of the 1950 act would not give the Department much basis because of the possibility of indefinite litigation—yes, I meant that word—

Mr. HANES. That is correct, sir.

Mr. BENTLEY. Thank you very much, Mr. Chairman.

Chairman MORGAN. Mr. O'Hara.

Mr. O'HARA. Mr. Hanes, I regret that I was unavoidably detained, but I have glanced over your statement. I think it is well prepared and I compliment you on the time and effort you have put into it.

I notice that you express this point, that it is necessary to use certain confidential information that cannot be disclosed. Is it your thought that that information cannot be disclosed in a judicial hearing?

Mr. HANES. I assume you mean by that, sir, is it my thought that it couldn't be given in camera to the court?

Mr. O'HARA. Yes.

Mr. HANES. Essentially, sir, yes. This is a subject on which the courts themselves have made a long series of rulings. They do not feel it is a proper province for the judiciary. Some decisions have actually gone so far as to say it is a violation of the separation of powers for the judicial branch to attempt to evaluate confidential information available to the Executive in his capacity as the conductor of foreign relations, with intelligence from other agencies; that the evaluation of such evidence, the bringing of it all together and the making of a decision involve both the protection of information given

him in confidence which should be respected, and is essentially a political decision.

The courts themselves, in a number of cases, have held this. We think it doubtful, actually, that the courts, on the basis of these decisions, would wish to receive it in camera.

That is something we cannot speak on conclusively since it is something for the judicial branch. We would oppose it because we feel it is a violation of the separation of powers, and because we believe essentially the Executive should be able to maintain the integrity of his investigative sources intact.

Now, we do think—and I have tried to state clearly—that the Executive should not just be allowed to go to the court and say, “I am not going to tell you anything because I am not going to tell you anything.”

We feel the Secretary should state with particularity why he cannot make certain information available. We think he should say exactly how much of the case is dependent upon information which he can't make available, and that he can't make it available for reasons that in his opinion are substantial reasons of national security or foreign policy; and then, beyond that, we still think in any evidence which he has relied on, he should give a fair summary of the evidence both to the applicant and, of course, to the court; and that the court should, as I am certain it would as it has in the past, look at the fair summary to see if the findings were supported by it, and also look at the statement of the Executive as to why he can't disclose certain portions—and I repeat they are usually small portions of the case—to see whether they agree that this is a valid exercise of his prerogative.

Mr. O'HARA. Doesn't it suggest itself to you that that would be giving to one individual in the State Department the right to deny a passport to someone without giving an adequate explanation to anyone, either to the applicant or later to a court of review?

Mr. HANES. Actually, sir, under the provisions that we have suggested, I don't think that that would be the case.

Again, we have a considerable experience in this regard as to what would satisfy the courts. The Supreme Court has not ruled in the passport matter about this question of confidential information, but lower courts have, and have upheld the Secretary's right to rely on confidential information under some circumstances; but they have also pointed out there are limits to this, and they have indicated that the Secretary must state with considerable particularity the substance of information on which he is relying.

Now, usually, in almost all of the cases that I am referring to, the only thing that really must remain confidential is the source of the information. In other words, the nature of the information, what is involved, a fair summary of what it is, is given.

Mr. O'HARA. May I interrupt to ask this question: You say that some lower courts have held as you have indicated?

Mr. HANES. Yes, sir.

Mr. O'HARA. Has the question gone above the district court?

Mr. HANES. It has gone to the court of appeals in at least four cases.

Mr. O'HARA. There is a conflict in the decisions of our courts of appeals, is there not? The courts have not agreed?

Mr. HANES. Not on this question in the passport field, sir. There have been dissenting opinions on this, but the court of appeals in the *Kent* case, the *Briehl* case, the *Dayton* case, and the *Boudin* case have held confidential information is something upon which the Secretary can rely.

Now the Supreme Court has overturned three of those cases, but not on those grounds. It never reached those grounds or reviewed them. So far as there is an expression of judicial opinion on it, there are four expressions by the court of appeals that have not been overturned, although they have also not been reviewed on that particular subject by the Supreme Court.

Mr. O'HARA. I want to congratulate you on the hard work you seem to have put in, and from your standpoint I think you have made a good statement—not that I agree with you. Convicting a person, or withholding from him a passport on hidden information, not revealed even to the Court, seems to me to be going pretty far from the American concept.

Mr. HANES. Thank you, sir.

Chairman MORGAN. Mr. Coffin.

Mr. COFFIN. Thank you, Mr. Chairman.

Mr. Hanes, do you know any other area where a right guaranteed by the Constitution—and we are talking about a right guaranteed by the fifth amendment—is finally determined other than by the Supreme Court?

Mr. O'Hara's question was focused on this point, which is the crux, or one of them, of the legislation before us; namely, who should make the final decision whether the secret information is or is not adequate to uphold the decision of the Secretary of State. I am not talking about whether this should be disclosed, but only whether the Court or the Secretary of State should have the final power of decision.

You say the Secretary of State should because this is a matter within his province and I am just asking whether there is any other right guaranteed by the Bill of Rights which can be finally determined by some official other than the Supreme Court of the United States.

Mr. RAYMOND. Mr. Chairman, if I might deal with that one—Chairman MORGAN. Go ahead, Mr. Raymond.

**STATEMENT OF JOHN M. RAYMOND, ACTING LEGAL ADVISER,
DEPARTMENT OF STATE**

Mr. RAYMOND. I think the problem is not who makes that decision, but rather what is the decision.

If the question is one of a political nature, that has always been left to the political branch of the Government and the Court does not decide.

Mr. COFFIN. My question is: Is there any other case—and I am asking for information now, that would be helpful—is there any other case where you get a conflict between a political decision, which should be made by the Executive or by Congress, and an individual right guaranteed by the Constitution, which should be adjudicated by the Court?

Mr. RAYMOND. You have frequently, of course, in cases a conflict between what in effect are two rights and that question is always weighed by the Court when they get into conflict. They try to resolve it without having a conflict come to the surface, but where there is a conflict they simply have to weigh the rights. The Supreme Court has done that in a number of cases.

Mr. COFFIN. I am talking about the particular conflict between a political decision and the constitutional right of an individual.

Mr. RAYMOND. I can't offhand quote you a case, but I think that there are such cases. I will be glad to look into that and see if there are.

Mr. COFFIN. I am ignorant on this, myself.

Mr. RAYMOND. I am reminded by my associate that in the *Chicago and Southern* case—that was the question of the right of an American company to do business abroad, where this question came up, and that was a Supreme Court case.

Mr. COFFIN. That is not exactly the kind of individual right that the Bill of Rights guarantees.

Mr. RAYMOND. That is true, and that is what I thought you were referring to.

However, in the *Briehl* case, that case was used by the court of appeals as one of its authorities.

Mr. COFFIN. I don't criticize you for not having the answer, but I would be glad to have you submit for the record a memorandum where you could show precedents in this field for this type of decision.

Mr. RAYMOND. I would be very glad to see what we can find on that. (The information requested is as follows:)

The area of "liberty" guaranteed by the fifth amendment, which may be described as the "right" to engage in business or follow one's profession, has been the subject of several Supreme Court opinions with regard to the effect on such rights of political or administrative decisions.

In *United States v. Curtiss-Wright Corp.*, 299 U.S. 304, 320 (1936), the Court considered the effect of a joint resolution providing that if the President finds prohibition of sale of munitions to certain Latin American countries may contribute to peace between them, and if after consultation with other Latin American governments the President makes a proclamation to the foregoing effect, such munition sales shall be unlawful. The President issued a proclamation, and the defendant was indicted for violating the joint resolution and the proclamation. In upholding the joint resolution and the President's proclamation, the Court said:

"* * * Moreover, he [the President], not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular, and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results. * * *

In *Chicago & Southern Air Lines v. Waterman Corp.*, 333 U.S. 103, 111 (1947), the Court considered the effect of sections 801 and 1006 of the Civil Aeronautics Act. Section 801 provided that any CAB order permitting a citizen or foreign air carrier to engage in foreign air transportation "shall be subject to the approval of the President." Section 1006 provided for judicial review of "any order" of the CAB, except only an order concerning a foreign air carrier. Nevertheless, the Court held it could not review a final order approved by the President regarding a citizen air carrier in foreign air transportation. The President had directed certain changes in the CAB order, and the Court said in regard thereto:

"While the changes made at direction of the President may be identified, the reasons therefor are not disclosed beyond the statement that 'because of certain factors relating to our broad national welfare and other matters for

which the Chief Executive has special responsibility, he has reached conclusions which require changes in the Board's opinion.

"The court below considered, and we think quite rightly, that it could not review such provisions of the order as resulted from Presidential direction. The President, both as Commander in Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into Executive confidences. But even if courts could require full disclosure, the very nature of Executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the Government, Executive and Legislative. They are delicate, complex, and involve large amounts of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the judiciary has neither aptitude, facilities, nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry. * * *

In *Greene v. McElroy* (27 Law Week 4528 (1959)), the plaintiff had been denied security clearance for employment by a Defense Department contractor after a hearing which, the court noted, began with a statement by the chairman which included the following:

"The transcript to be made of this hearing will not include all material in the file of the case, in that, it will not include reports of investigation conducted by the Federal Bureau of Investigation or other investigative agencies which are confidential. Neither will it contain information concerning the identity of confidential informants or information which will reveal the source of confidential evidence. The transcript will contain only the statement of reasons, your answer thereto, and the testimony actually taken at his hearing."

The court emphasized that it was not deciding whether the hearing given plaintiff was in accord with due process on the facts; it held only that a hearing without confrontation had not been explicitly authorized by either the President or Congress. But the court very clearly implied that it might be constitutionally proper for the President or Congress to authorize such a hearing where "necessary and warranted":

"Before we are asked to judge whether, in the context of security clearance cases, a person may be deprived of the right to follow his chosen profession without full hearings where accusers may be confronted, it must be made clear that the President or Congress, within their constitutional powers specifically have decided that the imposed procedures are necessary and warranted and have authorized their use."

Turning now to the passport field, the administrative procedure involved in the present bill would permit the use of evidence which, for reasons of national security or foreign relations, the Secretary of State determines must remain confidential. The bill would require that a fair summary be given the applicant. The source or perhaps certain specific details might be withheld. While this procedure has not yet been passed upon by the Supreme Court, it has been upheld by the lower Federal courts.

In *Boudin v. Dulles* (235 F. 2d 532, 535 (1956)), the court of appeals stated:

"We do not reach in the present posture of the case the contention made by Boudin that the Secretary cannot rely on confidential information in reaching his decision. But since that question may arise at a subsequent stage, we think the Secretary should—if he refuses a passport to Boudin after the further consideration we have ordered—state whether his findings are based on the evidence openly produced, or (in whole or in material part) on secret information not disclosed to the applicant. If the latter, the Secretary should explain with such particularity as in his judgment the circumstances permit the nature of the reason why such information may not be disclosed." * * * This will facilitate the task of the courts in dealing with the question of propriety of the Secretary's use of confidential information—a question which, we repeat, we do not now reach.

"* * * If the passport is still refused by the Secretary, and further judicial review is sought by Boudin, the district court may consider whether the findings made are justified by the evidence of record, or, if they are not so justified,

* If considerations of internal security rather than of the conduct of foreign affairs are involved, we think the Secretary should so state.

whether the Secretary has given reasons valid in law for keeping confidential any information—not disclosed to the applicant—upon which he states he has relied.”

The *Boudin* case was subsequently disposed of without passing upon the foregoing.

In *Dayton v. Dulles* (237 F. 2d 43 (1956)), the district court's summary dismissal of the complaint was reversed and remanded, the court of appeals quoting in part what is quoted above in the *Boudin* case. The district court, upon retrial (116 F. Supp. 876, 881 (1956)), noted that the substance of the confidential information relied upon by the Department of State was disclosed to the plaintiff, but not the sources or details. The Secretary certified that disclosure of the latter would have an adverse effect upon the source of security and intelligence information. The Secretary also certified that he relied on other confidential information not disclosed at all on the ground that to do so would prejudice the conduct of foreign relations. The district court then said:

“In the light of the foregoing, it is my opinion that the denial of a passport to the plaintiff did not violate either procedural or substantive due process.

“To hold otherwise would be to say that any citizen of the United States desiring a passport for the purpose of going abroad to engage in activities which will advance the Communist movement could force issuance of the passport unless the Secretary of State made disclosures detrimental to our national interest, affecting our internal security, and prejudicing the conduct of the US foreign relations.

“Such a holding would be contrary to a body of decisions which recognize the complicated, delicate, and manifold problems relating to our foreign relations and the fact that such relations are largely immune from judicial inquiry or interference. *Latvian State Cargo & Passenger S.S. Line v. McGrath* (88 U.S. App. D.C. 226, 188 F. 2d 1000), certiorari denied (342 U.S. 816, 72 S. Ct. 30, 96 L. Ed. 617); *United States v. Curtiss-Wright Export Corporation* (299 U.S. 304, 57 S. Ct. 216, 81 L. Ed. 255); *Harisiades v. Shaughnessy* (342 U.S. 580, 72 S. Ct. 512, 96 L. Ed. 586).” * * *

“As was observed by Mr. Justice Holmes in *Moyer v. Peabody* (212 U.S. 78, 84, 29 S. Ct. 235, 236, 53 L. Ed. 410), ‘it is familiar that what is due process of law depends on circumstances. It varies with the subject matter and the necessities of the situation.’

“Mr. Justice Frankfurter pointed out in *Joint Anti-Fascist Refugee Committee v. McGrath* (341 U.S. 123, 163, 71 S. Ct. 624, 644) that ‘due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process.’

“In *Betts v. Brady* (316 U.S. 455, 462, 62 S. Ct. 1252, 1256, 86 L. Ed. 1595), the Court said:

“That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial.”

“In addition to providing protection to the rights of individual citizens, the Constitution also recognizes interests of the Government and when conflicts arise, they can be resolved only by ‘balancing the conflicting individual and national interests involved.’ *American Communications Association, CIO, v. Doyle* (339 U.S. 382, 410 70 S. Ct. 674, 690, 94 L. Ed. 925).

“The essence of the plaintiff's claim is that he is entitled to confrontation of all witnesses and that denial of such confrontation constitutes a denial of due process.

“This contention asserts for the plaintiff in an administrative proceeding a right of confrontation conferred only on defendants in criminal actions and is not supported by authority where the question has been raised in administrative proceedings. * * *

“It seems to me that the Supreme Court disposed of the problem when, in *Chicago & Southern Air Lines, Inc. v. Waterman S. S. Corp.* (333 U.S. 103, 111, 68 S. Ct. 431, 436, 92 L. Ed. 568), it said:

“The President, both as Commander in Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into Executive confidences.”

“In my opinion, the Court must accept the reasons advanced by the Secretary

of State for not disclosing the source of the confidential information referred to and, under the circumstances of this case, the manner and use of confidential information accords with both procedural and substantive due process."

When the *Dayton* case again came before the appeals court (254 F. 2d 71, 74 (1957)), the court specifically approved of the Secretary's use of confidential information in view of the manner of its use and the nature of the case, emphasizing that "regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process."

"The second question is whether the Secretary could base his conclusion in this matter partly upon confidential information. Even if the ground for denial is valid, is the denial valid if the evidence which establishes the ground is confidential? The Secretary stated, as we have pointed out, that disclosure of this information would be detrimental to the national interest in respect to internal security and the conduct of our foreign affairs. Our view is that upon that basis he need not disclose the information but he may act upon it.

"The Supreme Court has not passed upon the precise question here before us, i.e., the permissible reliance upon confidential information in a passport case. But we find helpful guideposts in the principles laid down by the Court in different fields. The right to engage in business and the right to enter into contracts are parts of the liberty protected by the 5th and 14th amendments. No person can be deprived of those rights except by due process of law. The guiding principle in respect to them is well set out in the *West Coast Hotel* case. There the Court had before it a minimum wage act. The attack was that the statute was a deprivation of freedom of contract, a part of the liberty protected by due process of law. 'The principle which must control our decision is not in doubt,' the Court said. 'Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process. [Italic supplied.] Quoting from its own opinion in *Chicago B. & Quincy R. Co. v. McGuire*, and referring to the freedom of contract, the Court said, 'Liberty implies the absence of arbitrary restraint, not immunity from the reasonable regulations and prohibitions imposed in the interests of the community.'"

"The Court then quoted the often-quoted language of the *Chicago & Southern Air Lines* case, holding that due process "is not violated if the right to do business abroad is denied upon the basis of confidential information pertaining to foreign affairs." The principles laid down in cases involving commerce, the Court said, are of assistance in testing the nature of due process required in passport cases. The Court then concluded:

"We have before us a determination by the Secretary of State, based upon confidential information derived from sources available to him in the course of the performance of his duties, that a certain person intends to go abroad to advance the Communist movement. The Secretary disclosed to the person the substance of this confidential information. Upon the reasoning indicated in the foregoing paragraphs we conclude that this procedure satisfies the requirements of due process in such a matter. The community interest makes it necessary that this be so. The right to travel abroad may be denied upon that basis.

"Americans always resent and oppose the deprivation of liberty upon the basis of undisclosed information. We do so in this area. We would not agree to it except in necessitous circumstances of public concern. Such circumstances are here." * * *

"There the problem is whether disclosure would adversely affect our internal security or the conduct of our foreign affairs. The cases and commonsense hold that the courts cannot compel the Secretary to disclose information garnered by him in confidence in this area. If he need not disclose the information he has, the only other course is for the courts to accept his assertion that disclosure would be detrimental in fields of highest importance entrusted to his exclusive care. We think we must follow that course."

The *Dayton* case was reversed by the Supreme Court on other grounds without discussion of the foregoing.

In *Briehl v. Dulles*, (248 F. 2d 561, 574 (1957)), the appeals court allowed the use of confidential information saying:

"Dr. Briehl complains that the evidence in respect to the allegations asserted in the Secretary's advices to him may be in part confidential, and he argues that such possibility effectively nullifies the due process of the procedure. He seeks to bring the situation within the doctrine followed by the Ninth Circuit in *Parker v. Lester*, that if it be established in advance that a proffered admini-

strative remedy will not afford due process, the remedy need not be pursued. It is true that a passport denial may be based upon confidential information. But due process of law is a term of variable content. The necessity for secrecy in the conduct of foreign affairs has been asserted, seemingly without question, ever since President Washington refused to submit to the House of Representatives the documents relating to the Jay Treaty. The Supreme Court said in the *Curtiss-Wright* case:

"The marked difference between foreign affairs and domestic affairs in this respect is recognized by both Houses of Congress in the very form of their requisitions for information from the executive departments. In the case of every department except the Department of State, the resolution directs the official to furnish the information. In the case of the State Department, dealing with foreign affairs, the President is requested to furnish the information, 'if not incompatible with public interest.' A statement that to furnish the information is not compatible with the public interest rarely, if ever, is questioned."

"And recognition of the necessity for secrecy in foreign affairs, coupled with a strong admonition to the judiciary against any attempts on its part to peer into or to unveil such confidential material, is contained in the Court's opinion in the *Chicago & Southern Air Lines* case, from which we have quoted. That case concerned the right of an American company to do business abroad. That was a right of the applicant if he could meet the appropriate specifications. But the Supreme Court specifically and emphatically pointed out that the President could deny the application for secret and confidential reasons. *We know of no reason why an individual's right to travel abroad is to be treated by different constitutional standards than is his right to do business abroad.* And we know of no reason why treatment of alleged Communist affiliation is to be put upon a preferred basis as compared with ordinary commercial infirmities or adverse suggestions."

"Further justification for secrecy in a case of this type is supplied by the fact that the Nation is in a state of national emergency, caused by the infiltration program of the Communist movement. During such an emergency Cabinet officers may be forced to act on the basis of information the publication of which is inconsistent with national security. When the Secretary of State avows that in the interest of national security he cannot spread certain information on an open record, and explains with as much particularity as possible the reasons why he cannot do so, courts must rely upon his integrity and accept his statement."

"We held in *Boudin v. Dulles* that, where a passport has been denied by the Secretary on the authority of a specific regulation, he (the Secretary) must make findings in writing responsive to the requirements of that regulation, and in such a case must state whether the findings are based on evidence openly produced or on secret information and, if the latter, 'should explain with such particularity as in his judgment the circumstances permit the nature of the reasons why such information may not be disclosed.' We adhere to that ruling. We are of the view that due process in passport proceedings does not prevent the use of confidential information when foreign affairs or the national security is involved." [Emphasis added.]

The *Bright* case, like the *Dayton* case, was reversed by the Supreme Court on other grounds, without discussion of the foregoing.

It may be noted, moreover, that the Supreme Court has expressly upheld the use of a "fair résumé" of adverse confidential information relied upon by an appeal board in considering a claim of conscientious objection to military service. In *United States v. Nugent* (346 U.S. 1 (1953)), the specific issue was whether the registrant should be entitled to see an FBI report and to be informed of the names of persons giving evidence to the FBI. The Court held, 5 to 3, that the registrant was entitled to no more than "a fair résumé of any adverse evidence in the investigators' report," that the "hearing" required by the statute did not require "a full-scale trial for each appealing registrant," and that due process did not require such a trial.

Mr. COFFIN. I join with my colleagues in saying that your statement was very fair and logical, but I do not think it is long enough on facts. You have had opportunity during the past year to gather facts of two kinds and perhaps these could be submitted before the hearings close.

One is the question the chairman asked you about the number of applications—the traffic in this business since a year ago—you could collate these facts, could you not?

Mr. HANES. Actually, sir, as I say, we have attempted to avoid using these figures simply because I can't give you figures on people who would have been denied passports. That is something you can only determine at the time.

In my testimony at the end of April before another committee, I said that as of that date there had been approximately 1,150 applications from persons about whom there was some record of affiliation. I am not able to say that every one of those would have been denied passports because we have no way of knowing until we go through it; but the general rate of rise of this kind of application since the time of Mr. O'Connor's testimony last year to the present has been about 100 a month.

Mr. COFFIN. The second place where I would be interested in more facts: Could you give us without revealing names or prejudicing any sources of information, can you give us cases of people who have gone abroad and come back and what they have done? Can you give us a fair sampling without, as I say, hurting your own efforts in the future?

Mr. HANES. Well, the difficulty, sir, is always in this question of what they have done. This is why we have felt so strongly in this field: If legislation requires you to show in advance—and I might go so far as to say, if you are required to show after they have traveled—precisely what they have done to damage the national security, we find this nearly impossible. We have little or no way, for instance, of knowing what a person does once he gets abroad and, let's say, into the Soviet Union and Communist China.

Mr. COFFIN. But what he does when he comes back here?

Mr. HANES. Well, again we may eventually find some evidence of that when these people get back. As you know, the Government has methods of finding out some of the things going on inside the Communist Party and some of this may come to light.

We do know, of course, that the travel of many of these people is at the present time something that is being directed by the party. We know what they have done in some cases when they traveled in the past. We do know what some of the people have done abroad in their public statements. We know some of these things.

For instance, we have an applicant right at the moment who has lived abroad, out of this country for approximately 10 years. He has been thrown out of two countries. He has been living for some years now in East Germany. He is a very prominent official of the East German labor organization and is high in the councils of the Communist Party of East Germany. He has used those positions to be very effective in a propaganda way for a number of years.

He has full Communist documentation, including their permission to come out from under the Iron Curtain and demand—which he has done in no uncertain terms and with a good deal of pounding on the table—his right to an American passport. He isn't quite sure where he wants to travel, but he feels he would like to go perhaps to some neutral country—he mentioned India—and he wants a passport.

Now, that is the kind of case, or some of the kinds of cases we have.

Mr. HAYS. Would you yield to me?

Why don't you just refuse it and tell him to go to court?

Mr. HANES. We have not as yet acted on that case, and this is perhaps a good suggestion.

Chairman MORGAN. The gentleman's time has expired.

Mr. Farbstein.

Mr. FARBSTEIN. Mr. Hanes, you are an interested party in all these proceedings, aren't you?

Mr. HANES. Well, up to a certain point—

Mr. FARBSTEIN. When I say "you" I mean the State Department, of course. I don't mean you personally.

Mr. HANES. Yes, sir.

Mr. FARBSTEIN. Do you think there should be a review, by the interested party, of his own act?

Mr. HANES. Well—

Mr. FARBSTEIN. Isn't there something in the nature of a conflict of interest there?

Mr. HANES. Let me assure you, sir, that we in no way attempt to suggest that we think there should not be—indeed, I don't think that any legislation could deny the right to a judicial review of these procedures.

Mr. FARBSTEIN. Well, then, why do you object to that portion of the review referred to in H.R. 8329 where the Court shall consider confidential information only in the event that the information that is on the record appears to him to be inadequate?

Mr. HANES. Well, as I tried to say to Mr. O'Hara, sir, we do have some question as to whether the—in the field of political decision, that this particular kind of information is something that should be made under the separation of powers as it were, in a confidential statement to the Court.

Really this is basically a constitutional question and certainly doesn't imply any indication on our part that we don't think the courts are trustworthy, of course; but it is a more basic question—

Mr. FARBSTEIN. Then the only difference between us is that you want a determination somewhere as to whether or not the Court constitutionally should be given that right; isn't that so?

Mr. HANES. Well, this is certainly a part of the question. Let me say this—and perhaps this is an answer to your question: With regard to the kind of confidential information about which we are speaking, upon which the Secretary should rely, we have no hesitation, certainly, as to the adequacy of this information. We should have no hesitation on that ground as to anybody reviewing it.

The grounds of our hesitation are entirely different. They are not because we don't think it will stand up to a review. It is really a question as to whether this is a proper function for the judiciary; whether in this field of national security and foreign affairs an essentially political decision of the executive based on intelligence sources and of confidential information that is received from foreign governments is something that he should properly turn over for decision to another branch of the Government.

Mr. FARBSTEIN. So far as I know, I don't think anybody would oppose, as Dr. Judd said, the right kind of legislation.

Now, what is the right kind of legislation? It is a moot question.

Are the civil rights of the individual to be given consideration? I think you will agree they should be given consideration?

Mr. HANES. Yes, sir.

Mr. FARBERSTEIN. The feelings of another government must also be taken into consideration. It is very important. So you must strike a balance.

If you are going to take a position that you want it all your own way, you are going to continue to have difficulty in getting legislation. That is the result of what happened last year. And it seems to me under those circumstances that you should be satisfied to give a little.

Now, I can understand if you have security information from a foreign government that you don't want to disclose the name of the government, the foreign government, because it may close that source of information to you.

Now, I appreciate that, but supposing you get somebody who doesn't like somebody else and gives you information—not a government, not an official body. Why shouldn't that individual who gives information in connection with a neighbor, or someone that he doesn't like, why shouldn't that be subject to cross-examination? Why shouldn't that be subject to disclosure?

According to your interpretation of the bills that you want, you want to restrict the disclosure of all information, or the names of people. You don't want to disclose the names of anybody, do you?

Mr. HANES. No, sir, that is not so. If I gave that impression, I have very badly stated our position. The kind of person that you are referring to, we believe, either should be prepared to come and give testimony openly or the Department should not rely on this information.

Now, we feel that the Secretary of State, when he relies on confidential information—and the courts also feel this and have said it—should be required to certify to the court that the reason he cannot disclose this is because of substantial danger to the national security or to the foreign relations of the United States.

I suppose it is conceivable that—

Mr. FARBERSTEIN. You may think a certain individual is important enough and that the disclosure of his name may affect the security of the United States, but I may not think so. You are an interested party and therefore you would take one view where I, being either interested or disinterested, might disagree with you.

Basically, this is in the nature of a penal statute. Being then in the nature of a penal statute, there should be particularization of the basis for failure to disclose, or denial of disclosure, and that is when I say to you that the question of civil rights should be considered a bit more liberally than what you attempt to consider it.

There is on page 3 of bill H.R. 8329, certain methods—well, there is particularization where the U.S. security would be endangered. Would you please tell me, if you can, what else you would add to those three items, and I say particularization is necessary because in my opinion the bill is in the nature of a penal statute.

Mr. HANES. As far as the penal statute goes, sir, I think we should be very clear that the denial of a passport should never, in our opinion, be a punitive action. It is a preventive action.

Mr. FARBERSTEIN. I don't say that this in and of itself is a penal statute, but it is in the nature of a penal statute and all penal statutes of necessity must be particularized or detailed.

Mr. HANES. Specifically, sir, we feel that under these findings on page 3 of the bill—which, as I said, we certainly don't disagree with—that under those you could not deny even an active and dedicated Communist a passport. In our opinion, this doesn't meet the requirements that we feel are necessary to be met.

Mr. FARBERSTEIN. Well now, let's see. Let's take (A).

transmitting, without proper authority, security information of the United States;

You don't want to give X a passport because you are afraid, because of his past record and because of information in your possession, he will transmit security information, isn't that correct?

Mr. HANES. Well, there might be a particular case; but there are a considerable number of persons who are extremely necessary to the Communist apparatus whose job does not require such transmittal. But again—

Mr. FARBERSTEIN. What would he be doing if he wouldn't be transmitting information?

Mr. HANES. The most difficult part of this whole statute is the advance finding requirement that the Secretary of State must find reasonable grounds to believe that his activities abroad would specifically do one of these rather extreme things.

Now, we feel on the basis of what the known objectives and operations of the Communist Party are, and a person's past actions, that there is a pretty reasonable presumption as to what he will do abroad; but we also feel it would be nearly impossible in almost any case to make an advance showing of that.

Chairman MORGAN. The gentleman's time has expired.

Mr. Meyer.

Mr. MEYER. Thank you, Mr. Chairman.

Mr. HANES, I am quite interested in the meaning of words and different expressions which can be quite truthful, but also there could be another phase to them.

For instance, on page 3 you say:

Such a conspiracy can operate successfully only so long as it can maintain security and rapid communications.

I would like to ask you, isn't it also true that freedom can only operate successfully if it maintains such communications?

Mr. HANES. Yes, sir, I feel that the freedom of information across national boundaries is one of the greatest guarantees that freedom has in the world today.

Mr. MEYER. Thank you.

Then I would like to ask you, on page 5 you use an expression that I don't like at all and I would like you to define it. You say, "orthodox American variety" referring to political opinions and other things.

Could this be Mr. Nixon's Republicanism?

Mr. HANES. I purposely used that phrase really to suggest the undesirability and impossibility of ever establishing any such criteria. I should have probably put it in quotation marks. I intended to

suggest there is no such thing and that we have no desire or intention of establishing any kind of criteria; to say one thing is orthodox and another isn't, or to attempt to deny anybody's going abroad simply because the administration, let us say, may not happen to like what he says or what he believes.

Mr. MEYER. In other words, you meant there was no "orthodox American variety?"

Mr. HANES. I meant it, sir, and I am grateful to have you point out that perhaps I didn't make that clear.

Mr. MEYER. Thank you.

And then on page 6 you have a statement here that "he should carry the burden of demonstrating clearly that he will not engage" and so forth. Now, I think I understand what you mean, but I also believe that you probably have a legal background and understand the American system of law which is founded upon the principle that a man is innocent until proven guilty, and that this is more or less turning this around, isn't it?

Mr. HANES. Well, sir, if I could answer that in a couple of ways: Again I would like to emphasize that these are not and we don't think they should be, judicial proceedings involving guilt and innocence. Those are all terms that involve crime and punishment. Denial of a passport we don't think should be a punishment for anything. This is a preventive action, and if a person violates his restriction—or if there is a criminal action, it should be handled by other means. But I also have pointed out that we believe the Congress should establish in this law—and incidentally, the Congress has established in many previous laws—findings concerning the nature, activities and methods of operation of the Communist Party.

We believe that the Department should then be required, if they wish to deny somebody a passport under these grounds, to demonstrate that a person is knowingly, actively, and currently engaging in activities supporting that conspiracy for these ends which the Congress has found to be inimical to our security.

Having made this finding, we believe that the Secretary ought to be able to deny a passport. However, even under those circumstances, we can conceive of cases where a person, unlikely though it may be, might be traveling abroad solely for other reasons, or under some circumstances might bring the Secretary to agree that he was probably not going to engage in such activities.

Mr. MEYER. Some people advance the idea that actually what you are doing here is saying that a man is guilty and that you are demanding that he prove himself innocent and in fact the denial of a passport could in many cases be a form of preventive crime, or protective custody and protective arrest.

This is what is indicated if this is done in this manner.

Mr. HANES. The Department must first establish these things, that the person is knowingly and actively and currently engaging in such activities.

This next sentence is intended to be an additional protection to the individual, that even after the Secretary has made this finding, the individual should be allowed to show if he can, as to a particular trip, despite the evidence as to his present activities that he is not going, in this case, for that purpose.

Mr. MEYER. I find it difficult to reason out, that actually under conditions where you use confidential information and don't disclose the source, that this can be done in a fair and equitable manner. That is the general conclusion that I arrive at.

I guess my time has expired.

Chairman MORGAN. Mr. Gallagher.

Mr. GALLAGHER. I would like to say that you seem to place great emphasis on the passage of information by couriers which forms the basis of your right to deny a passport.

It is very difficult for me to believe that in this day and age they would rely solely on that type of passage of information for the continuation of their apparatus. You say that the power of making the decision should not necessarily rest in another branch of the government. If it were solely that, I would agree with you. However, there is the question of civil rights involved here and the last resort in the question of civil rights should be in the judiciary.

I believe if there were some way we could reconcile both of these principles, you would have a better opportunity for this type legislation passing. I agree with you that we should have this legislation but we certainly should not jeopardize any question of civil rights.

I think your counsel certainly should research the effects of this and pass that along because this is a novel approach for the executive to jeopardize civil rights on a strictly administrative basis. I would like to hear what your results are on your research.

I yield my time.

Mr. BENTLEY. I want to ask one question. You may answer it or supply the answer for the record. Do you regard the possession of a passport as a privilege or a right?

Mr. HANES. I regard the possession of a passport as a privilege. This question 20 years ago could have been answered much more simply and I think there would have been no question about it whatsoever.

The fact is that, as has been brought out in earlier questioning, the passport today has a dual function, one of which is political and one of which is as an exit permit and complicates it. I think the privilege quite clearly appears from the provision of the passport in which the Secretary of State requests, "all whom it may concern to permit safely and freely to pass, and in case of need to give all lawful aid and protection to the above-named citizen of the United States."

This is a privilege which is dependent upon a number of things. It is dependent upon citizenship. It is ultimately dependent, I suppose, as citizenship should be, on the matter of allegiance.

Mr. BENTLEY. The right to travel, of course, on the other hand, is a right and not a privilege. The right to travel abroad.

Mr. HANES. The right to travel, if you wish to be technical about it, is a constitutionally protected right derived from the liberty clause of the fifth amendment.

If I might be a little more accurate, I would say probably the right of a citizen to exit the United States is a constitutionally protected right, because I think it would be difficult for us to say the U.S. Constitution can protect what a citizen can do in a foreign country. That is exclusively under the control of the foreign country.

Mr. BENTLEY. It would be interesting to have an answer for the record, Mr. Hanes, unless you care to give one now, as to how the exercise of a right—that is, the right of travel—can be conditioned by what is not a right but a privilege, that is, the possession of a passport.

Mr. HANES. We would be very glad to supply a comment on that, sir. I would rather do that for the record rather than give an offhand reaction to it. It is a very interesting question.

(The information requested is as follows:)

The obtaining of a passport is a privilege. Section 215(b) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1185(b)), has made it unlawful, during the existence of a state of war or national emergency proclaimed by the President (and upon Presidential proclamation of the necessity for restrictions upon exit and entry), for a citizen to depart from or enter, or attempt to depart from or enter, the United States, unless he holds a valid passport. Thus, the Congress has, in effect, given to the President and the Secretary of State the power to control the right of the citizen to exit from the United States. (See the limitations upon travel set forth at 22 C.F.R., pt. 53.)

The effect of this act of Congress, when coupled with the Presidential proclamation, has been to alter the traditional character of a U.S. passport. A passport is no longer merely an international document of identification. It is in addition an exit permit, the possession of which is required before the right to depart may be exercised. Criminal penalties are provided by section 1185 to punish violation of these limitations upon the constitutionally protected right of exit. Under these circumstances, the privileged character of the document is subordinated. Should the present emergency be terminated, should restrictions on departure and entry be no longer required, or should the statute be changed to require a separate exit permit instead of a passport as the necessary documentation to leave the country, the basic privileged character of the passport would again become paramount.

Mr. BENTLEY (presiding). If there are no further questions, the meeting stands adjourned subject to the call of the chairman.

(Whereupon, at 12:50 p.m., the committee adjourned, to reconvene at the call of the chairman.)

PASSPORT LEGISLATION

TUESDAY, AUGUST 11, 1959

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, D.C.

The committee met, pursuant to adjournment, in room G-3, U.S. Capitol, at 11 a.m., Hon. Thomas E. Morgan (chairman) presiding. Chairman MORGAN. The committee will come to order.

We meet this morning on the passport control legislation. Our witness this morning is the Honorable Robert Murphy, Deputy Under Secretary of State for Political Affairs.

Mr. Secretary, I understand that you do not have a prepared statement. You may proceed as you see fit.

STATEMENT OF HON. ROBERT MURPHY, DEPUTY UNDER SECRETARY OF STATE FOR POLITICAL AFFAIRS

Mr. MURPHY. Mr. Chairman and gentlemen, I am grateful for this opportunity to come here and talk to you.

Mr. Hanes appeared before you the other day and outlined in a rather comprehensive statement the basic notions and ideas that we in the Department have on this particular subject, which is really very well known to you. I don't know that I can add a great deal to it.

I would like to say that if there is any notion that out of a spirit of capriciousness in the Department of State—or just sheer bureaucracy—we are interested in restricting the travel of Americans abroad, I would like to do what I can to dispel that notion, because our whole policy is based on a principle of promoting the travel of our citizens abroad, and in no sense of the word do we want to do anything to interfere with legitimate travel of our citizens.

We do feel that we are faced with a problem which is very familiar to all of you, and it is really only one aspect of a larger problem. And I don't want to at all exaggerate the importance of this particular aspect of it. That is the travel of—what shall we say?—activists in the American Communist group who are interested in contacts and the activities of the international Communist movement, whether it be travel to the all-Soviet Union Congress in Moscow or to other points where their activities would be necessary for the purposes of the movement and of the party.

Now that is a problem. Of course, we in our Foreign Service have been associated with it for many years and have always assumed that the Secretary of State had that discretionary power to deny a passport where he thought that the evidence was indisputable and justified on his part.

We were rather rudely disillusioned on that subject in 1958 by the Supreme Court and were told otherwise, so that it becomes a question of what type, what design of legislation is necessary to correct that, if in your opinion you feel, as we do, that the circumstances require it.

And then it becomes a matter of the words, the phraseology which you will use in defining the authority and the right of the Secretary of State to take affirmative action in the denial of passports in such cases.

We have always had the rather loyal feeling that the Secretary of State would not wittingly abuse such a discretion. If he did, certainly in the old days there was always the right on the part of the citizen of judicial review, a writ of mandamus to air the proceedings and to require the Secretary of State to justify his action.

I think that in some of the bills that have come to my attention it is quite normal and right; it seems to me there should be a heavy emphasis on the right of the citizen to the ordinary judicial process—confrontation, cross-examination—and we heartily sympathize with that. However, we are in a box because of the circumstances relating to the manner in which some of this evidence is obtained.

We have had the feeling that the Secretary of State, after reviewing it—and I might say in past practice in these cases the Secretary of State has made a personal review—there aren't so very many—and a summary of the evidence is provided to the applicant for the passport—I would have the feeling this is a situation where there should be a waiver of the requirement of the ordinary processes of judicial review; that is, confrontation and cross-examination.

Where I sit in the Department, seeing the flow of information from the several agencies relating to this subject matter, I know perfectly well that it is not going to be possible to invoke that kind of proceeding. If it is invoked, the executive branch will simply be put in the position of being unable to make a case.

Now that, in effect, is our situation. The statement that has been made outlines in detail our views on the several bills that have been introduced, and I am just here to be of any assistance I can in any way, Mr. Chairman, to answer whatever questions I can and discuss it with you.

Chairman MORGAN. Thank you, Mr. Murphy.

Mr. Murphy, as you know, our usual procedure is to operate under the 5-minute rule. Each member has 5 minutes in which to ask questions.

Mr. Murphy, last year when the President sent up his message to Congress, the message certainly conveyed a sense of urgency. Over a year has passed by without any legislation.

You still think that the sense of urgency in the President's message is still present?

Mr. MURPHY. I think so, Mr. Chairman. It may not involve a great many individuals. After all, there were not very many Lenins necessary to the Russian Revolution. Sometimes one would be quite sufficient to provide a danger to the security of this country. It is that kind of a case that I have in mind.

Obviously travel is only part of their activities. There are other ways and means perhaps of communication, but it is—personal contact is a very essential part of the activities of this particular or-

ganization. I think that we can say with entire honesty and conviction that there is an urgency involved.

Chairman MORGAN. Mr. Secretary, would the passage of a bill similar to the Bentley or Selden bill prevent an individual like Paul Robeson from traveling abroad?

Mr. MURPHY. I would hope it would. There are certainly features in both those measures that are extremely helpful. As you know, we would have preferred the more comprehensive language that was used in the text which was sent down last year.

There certainly is the right of the Secretary of State to act with discretion under those two measures and that would be very helpful to us.

Chairman MORGAN. Mr. Chipfield.

Mr. CHIPFIELD. Thank you, Mr. Chairman.

Mr. Secretary, we are always happy to have you come before this committee. I have introduced a bill on this matter and I am very hopeful that appropriate legislation will be passed. I think there is a need for it and we should give the discretion to the Secretary of State which we need for our own security.

I have no questions.

Mr. MURPHY. Thank you, Mr. Chipfield.

Chairman MORGAN. Mr. Zablocki.

Mr. ZABLOCKI. Thank you, Mr. Chairman.

It is good to see you, Mr. Secretary.

I believed that a passport bill was urgently necessary, but I am somewhat puzzled since you say the purpose of the bill is to curtail the flow and exchange of Communist information. You say our policy is to encourage visits abroad, but that activists in the Communist Party should be prevented from going abroad to exchange information. I say I am puzzled because evidently we have two policies, one for passports and one for visas. When we invite the chief boss of the Communist Party to come to the United States, after having been visited by several of his lieutenants in one year, this legislation doesn't seem to make sense.

Mr. MURPHY. Well, we think it does. The tactical reasons relating to, or the invitation extended to, we will say, Mr. Khrushchev—the other two were visits of a different character—I think should provide us with some opportunities to break down a relationship within the Soviet Union which may be of some value to us.

This is a very large question, Congressman Zablocki, as you know, and I can only say, and I would rather restrict it to this, that this is a calculated risk of a tactical nature which we think is fully justified under the circumstances.

We feel that, for example, this particular individual has many distorted notions about perhaps his own power and relatively about our power. Just looking at that one aspect of it, I think the impact on him of direct contact with what he might see over here might adjust some of his notions and perhaps somehow provide some safeguards that don't exist now.

Mr. ZABLOCKI. Isn't that wishful thinking? After all, he sent Mikoyan and Kozlov here, and they must have reported to him. How can we make a further impression upon him—he won't believe what he sees when he gets here anyway.

Mr. MURPHY. I think that the effect of the visits of Mikoyan and Kozlov on him were rather good. I don't believe that that was a negative effect at all.

Mr. ZABLOCKI. If that were true, we should have withheld his visit here so much longer.

Mr. MURPHY. Perhaps nothing is perfect, but the question of timing, I agree with you, is very important. This is a calculation and history may prove we are wrong, but I think it will prove we are right.

Now, about the inconsistency, I am not—

Mr. ZABLOCKI. Mr. Secretary, this hearing today is not on the Khrushchev visit, but it doesn't seem proper when we, for example, because of public opinion, stop the visit of Tito who had left the Cominform, who had defected, and then we invite the chief boss of the Cominform to come here.

Mr. HAYS. Could I just say, Tito has no political value in the United States at the moment.

Mr. MURPHY. I might also add to that that Tito has expressed his great satisfaction on the theory that this can promote some of the things that we are seeking. He feels very strongly that this is a good move.

Mr. ZABLOCKI. He probably sees a possibility of his visit to the United States.

Mr. MURPHY. I don't believe it is connected that way. I think he is resigned to the fact he won't—

Mr. ZABLOCKI. I would rather see Tito than Khrushchev come here. I am sorry. I have no questions, Mr. Chairman.

Chairman MORGAN. Mrs. Bolton.

Mrs. BOLTON. Thank you, Mr. Chairman.

I am interested in Mr. Zablocki's—

Mr. ZABLOCKI. Will you yield for a moment?

Mr. Secretary, I didn't mean that as a personal criticism. I have a suspicion you had nothing to do with this visit, or exchange of visits.

Mrs. BOLTON. I live in a community that is violently opposed to Khrushchev's coming and has expressed itself very violently in our press. When Mikoyan was invited by our fellow Clevelanders, Mr. Cyrus Eaton, some rather blew up over it.

For myself, I am of two minds. I think this visit different from the giving of visas and the issuance of passports.

Because of the Supreme Court's decision last year passports can no longer be refused. This means that many unable to get passports in the past can go out and get their orders, and bring in messages and then come back here and use them.

Now, Khrushchev is coming. Perhaps he will see something more than he expects and believe it; perhaps he won't.

Chairman MORGAN. Mrs. Bolton, what is to prevent them reporting to him here and getting their orders during his visit?

Mr. MURPHY. Of course, in our own country we do have ways and means of controlling and handling some things that we don't have abroad. There are some means of access, perhaps.

Mrs. BOLTON. Mr. Secretary, we, of course, have been warned by Mr. Hoover that the Communists are redoubling their efforts in this country. Those are their orders and we just fitted into their hands

very beautifully. But to get to the point of our meeting this morning, do we not need to reestablish what we thought we had, which was the power of the Secretary of State to deny a passport to someone whom he felt was an absolute danger to this country?

Mr. MURPHY. That is the problem. That is the problem.

Mrs. BOLTON. In these bills—we have several, Mr. Hays has a bill, Mr. Selden, and Mr. Bentley; they are all a little different. All are very thoughtfully done. I know Mr. Curtis from Missouri has given a great deal of study to this matter for a year—the whole status of passports, the history of them and everything else.

It was interesting to me to find some time ago that there had never been a proper definition of what a passport is. In going over these bills, would you suggest to us any one of them that would more really cover what you are hoping for without putting up some other problems?

Mr. MURPHY. We are attracted by a number of the features in several of the bills. Certainly Mr. Bentley's bill and Mr. Selden's bill contain a great deal of most useful provisions as do some of the others. They are, of course, less comprehensive, more restricted in nature than the measure we suggested last year, especially our section 103 which relates to the broader ground of the dangers to the conduct of our international relations and which gives the Secretary of State a little broader discretion.

Mrs. BOLTON. Mr. Hanes went into them most carefully the other day.

Mr. MURPHY. Mr. Hanes gave you an analysis with which I agree, and I won't waste your time by repeating it again this morning.

Mrs. BOLTON. I don't want to waste yours either.

Thank you, Mr. Chairman.

Chairman MORGAN. Mr. Burleson.

Mr. BURLESON. Thank you, Mr. Chairman.

Mr. Secretary, if the Department operated as you formerly operated before the Supreme Court decision, what in your opinion may have been the action in granting passports to some of the youths who attended the Vienna Festival recently?

Mr. MURPHY. This last one?

Mr. BURLESON. Yes, sir.

Mr. MURPHY. What we would have done if we had the authority to deny?

Mr. BURLESON. Yes, sir.

Mr. MURPHY. Well, I think on balance we might have refused some individuals passports to go to it. On the other hand, the fact that this was the first festival held outside the Iron Curtain gave us some opportunities which we didn't have in the other circumstances and we were inclined this time to encourage a certain number to go to that meeting, for reasons that I think will be fairly obvious to you.

Mr. BURLESON. But perhaps there would have been some denied.

Mr. MURPHY. I think there would have been some denied, yes, sir.

Mr. BURLESON. Thank you, Mr. Secretary.

Chairman MORGAN. Mr. Fulton.

Mr. FULTON. I am glad to have you here, Mr. Secretary, and I am very pleased about your personal promotion.

Mr. MURPHY. Thank you, Mr. Fulton.

Mr. FULTON. Second, I think Mr. Hanes has done a very excellent and high level job in presenting this matter before this committee previously in recommending passage of the passport legislation. I commend him on that presentation.

Next, I think this visit of Khrushchev's should be put in a context of an exchange, rather than just a separate, isolated visit.

For example, we have had Nixon go to Russia when Koslov came here to the United States and came to Pittsburgh, a part of which I represent in Congress. I am sure that Nixon has done a much better job on the American point of view than Koslov did on the Russian point of view here.

Secondly, we have had the exchange of Senator Humphrey who certainly had an influence on Khrushchev, even if he just did tire him out after 8 hours of conversation. Khrushchev certainly would have a greater respect for our powers of persistence and of talking after Senator Humphrey got through.

I think it was very fine that Governor Harriman went to Russia and the nine U.S. Governors, and had their impact on the various Russian officials, as well as the people of Russia. I am one of those people who thinks we will have a tremendous advantage through Eisenhower going to Russia as against Khrushchev coming here. When it is put in the context of what Under Secretary Murphy has said, that we are in a position where we can get through to the Russian people and break down the Iron Curtain, I don't think we should be part of maintaining the Soviet Iron Curtain when we have an opportunity to get through to the people.

These exchanges substitute direct contact and likewise direct observation for propaganda that has been distilled and ready for consumption.

I have always been one who feels that the Russian people are fine people. While we disagree with their Government, nevertheless, if we can get through to them, as well as to the people of the captive nations, we are doing much better.

There has been a disagreement around this committee table as to what to do on the Russian-American cultural exchange agreement and there is complete disagreement on that U.S. policy among the various members of the House Foreign Affairs Committee.

As to the captive nations, I have strongly favored food for Poland and I have been for economic aid for other captive nations. I would help the people raise themselves and I want to be friendly with them even though they do have a government that is antagonistic to ours.

I want no disagreement with my good friend, Mrs. Bolton, because I come from the city of Pittsburgh and our city welcomed Koslov—

Mrs. BOLTON. You are not disagreeing with me, my dear boy, I was just saying what my city felt.

Mr. FULTON. Our Mayor Thomas Gallagher, a Democrat, of Pittsburgh, has personally invited Khrushchev to come to visit us. Our Governor of Pennsylvania, David Lawrence, a Democrat, has personally invited Khrushchev to come. Our Democratic candidate for mayor of the city of Pittsburgh, State Senator Joseph Barr, a Democrat, has personally invited him.

Also Mr. Paul Reinhold, the Republican candidate for mayor, has personally invited him. Our city certainly wants him to come

and see the industrial power of our city. We are very willing to trade or exchange Eisenhower on a visit to Russia to get Khrushchev in the Pittsburgh district and let him see what power we really have.

On this passport question, I have a different point of view. I think a passport is the inherent constitutional right of every U.S. citizen. But I think the country has the right to protect itself and that should be done on placing conditions on exit and reentry permits into the United States. Does not the U.S. citizen who has committed no crime have the right to a passport; because I feel there is the right to travel wherever a citizen might want to go in the world? I have real doubts under these circumstances whether under the Constitution or any act of Congress, a U.S. passport can be limited as such. But when the U.S. citizen or permanent resident comes back in, I would then have a procedure whereby in certain cases the Attorney General could examine him under oath to find out what he had been doing abroad constituting subversive and illegal activities. The citizen would then have to apply for a reentry permit upon returning. At that particular time of reentry you then have him violating the law or perjuring himself if he doesn't tell the truth, or pleading the fifth amendment, which destroys his power to do damage upon reentry.

That automatically would give most citizens their reentry permit on leaving the country. But in certain cases they would have to apply for it on returning and wouldn't get it prima facie on original application.

The Attorney General can proceed to a reentry hearing with questions directed toward evidence that is secret, and by the questions bring out what this person has been doing abroad against the security of the United States. He cannot then come right into this country without screening and he will be very careful in asking for a passport if he is going to be under oath when he comes back and be put in jail on a criminal or a civil penalty in case he doesn't tell the truth.

In addition this hearing would be a source of additional information for the U.S. Government. I am one of those people who feel the Supreme Court was right under the Smith Act when they said, "You cannot, on a man's mere intention, find him guilty of something," and here we are guessing at what a person's intention is abroad when he asks for a passport.

There are no acts involved yet when the person applies for a passport. We are then guessing at what his intention will be rather than pinning the person down after the fact of his activities against the security of the United States, when he seeks to come in under a reentry permit. And that is the reason I think we should have a new look at this passport legislation to see if such a reentry hearing provision should not be added. I hope you will consider it.

Chairman MORGAN. Mrs. Kelly.

Mrs. KELLY. Mr. Chairman, at this point, in view of the questioning, I wonder whether it is even wise to continue these hearings for the rest of the session.

My question is—and I quote from the statement of Mr. Murphy, "this is a calculated risk of a tactical nature which we think is fully justified under the circumstances"; "this particular individual has many distorted notions"; and "the impact on him of direct contact with what he might see over here might adjust some of his notions"—

coming to this country, would it be a good risk to permit American citizens to travel to Russia in hopes that their distorted views might be changed?

Mr. MURPHY. If you have probably little faith in the convictions of our citizens, that might be true. I don't. I think that the average American traveling abroad is a pretty good ambassador, Mrs. Kelly. I have not met very many who have been disturbed in their fundamental concept of our system of government by a visit to the Soviet Union.

Mr. HAYS. I think she meant just the reverse.

Mr. MURPHY. No, I thought she meant Americans going abroad being affected by what they saw and heard.

Mrs. KELLY. No. That their distorted views might be corrected by this visit to Russia.

Mr. MURPHY. You are talking about their distorted views?

Mr. HAYS. Certainly if anybody believed communism was much good, certainly a trip to Russia would convince them it wasn't so hot.

Mr. MURPHY. Of course, that is part of our policy to promote travel abroad.

Mrs. KELLY. Then would you permit these people who have leanings to go to Russia?

Mr. MURPHY. I am not talking about leanings at all. I am talking about activists and there are very few. Sometimes a single one can be of great danger.

After all, if the Germans had not given Mr. Lenin a laissez-passer to return to the Soviet Union, we probably would not have had the Soviet Revolution in 1917. That is the case I am talking about. I am not talking about the man who might have ideas on the subject, or views. He is entitled to those.

We are not restricting his travel at all. I am talking about activists, and, as you know, the number of activists who have been refused in the past have been very few. That is the only thing we are striking at in this measure.

Mrs. KELLY. That is all, Mr. Chairman.

Chairman MORGAN. Mr. Adair.

Mr. ADAIR. Mr. Chairman and Mr. Secretary, in the last Congress, the Department in my opinion made a very strong case for legislation of this sort. I think you have done so again in this Congress. I don't have a question, but I do have a statement of position. I think that the Secretary should have the right to exercise his discretion. In my opinion this committee and this Congress have an obligation to enact such legislation. I think a good many of these other arguments against passage of legislation at this time are more or less in the nature of shadow boxing, and I just want to say for myself, I think we should pass such legislation.

That is all, Mr. Chairman.

Chairman MORGAN. Mr. Hays.

Mr. HAYS. Mr. Chairman and Mr. Secretary, I might say I presume you are apolitical but if I were a Republican I would take exactly the position Mr. Adair has taken because that way you can milk all the good out of both sides of the question. You can fight communism on the one hand and go home and make speeches about how you get a passport bill to help control communism and then you can permit

the No. 1 activist in the world to visit the United States and get all the propaganda value you can out of him to run your favorite candidate for President in 1960.

Now, of course, being a realist in politics, I know that the issue in 1960 may not be Khrushchev because the American people have a happy faculty for not remembering much of anything politically longer than 3 weeks, and it is a good thing because if they did they would probably all go crazy.

So this whole business may be premature, but nevertheless, let's face it: If it is a danger to have an American activist go to Russia, it must be 10,000 times as much danger to have the No. 1 activist come over here, and I will tell you why: If he makes as big a monkey out of Eisenhower as he did out of Nixon on television—and that is contrary to what the press carried, but I saw the film clips myself, and he was like Wallace Beery in the old movies; nobody wanted to play in a movie with him because he stole all the scenes, and that is what this fellow did.

You didn't know Nixon was there, and I will say to you unless the President's speech writers do a better job than they did on the Landrum-Griffin bill and some other bills, and unless his attendants keep both shoes on him instead of one golf shoe and one regular shoe, while Khrushchev is here, this country may suffer grievously.

In all fairness, if I were chairman of the committee, I would announce, in order to avoid embarrassing the President, I wouldn't hold any more hearings on this bill until after Mr. Khrushchev had gone.

Now, I didn't use my 10 minutes to make a speech, and I guess we are given 10 minutes from some of the previous speeches that were made, but I just thought, in view of the fact that there were some speeches made, I might as well get mine off my chest.

That is all, Mr. Chairman.

Chairman MORGAN. Mr. Bentley.

Mr. BENTLEY. Mr. Secretary, I would like to clarify one of your remarks about some of the bills before us.

You gave the impresssion a couple of times that you felt that both my bill, 7006, and Mr. Selden's bill, H.R. 55, lacked the comprehensive wording which the Department would prefer.

Inasmuch as Mr. Hanes strongly supported my bill in his testimony the other day, I wondered if you felt that my bill also lacked comprehensive legislation, insofar as the Department was concerned?

Mr. MURPHY. I referred to language in our bill last year which appeals to us a great deal, Congressman Bentley.

It relates simply to that one section; persons to whom passports could be denied. "Persons as to whom it is determined upon substantial grounds that their activities or presence abroad or their possession of a passport would be in violation of any law of the United States or of any State or Territory or any orders of any court," and then this wording, "or seriously impair the conduct of the foreign relations of the United States."

The third provision: "or be inimicable to the security of the United States."

That wording, we think, is valuable.

Mr. BENTLEY. I was interested, Mr. Secretary, because when you testified before the other body you strongly supported a bill which was identical to mine.

Mr. MURPHY. I thought I said that we did like your bill, we liked Mr. Selden's bill, we liked both of them. It is only on that point where we would feel that that could be somewhat of an improvement. If we can't get that language, obviously we would be very happy to have your measure. This is not intended to be a criticism of your bill, but it is something which the Secretary also should have, this broad discretion.

Mr. BENTLEY. Since everybody is talking about the great visit next month, I suppose I should say something about it, too.

You spoke of the possibility that Mr. Khrushchev might be strongly impressed with what he saw and learned while he was in the United States.

I assume you have taken into consideration a possibility that his reception over here in some of our larger cities where there are certain groups which are not exactly pro-Communist and pro-Khrushchev in their feelings, a reception such as was experienced by Mr. Mikoyan last winter might, if such a reception actually prevailed, it would go far toward destroying any good impressions or good feelings that he might have concerning this country.

Mr. MURPHY. We appreciate there are elements of risk involved here, Congressman.

I didn't know, Mr. Chairman, whether you wanted me to get into an exhaustive discussion of this subject or not. I was not sure it was germane to this issue. There are a great many aspects to it. We feel there is a good deal of fermentation going on both inside the Soviet Union and the satellites. How are we going to capitalize on it? Not, certainly, by just making speeches over here.

One of the aspects of it inside the Soviet Union is the discipline they are able to maintain, some of which is generated by the notion that is conveyed to them every day through their press, on the radio, by party activities of different sorts, that they are under imminent danger of attack from the West.

Now, if that notion on the part of the Soviet people and population—and, after all, regardless of party ideology, there is a great deal of sheer patriotism left inside the Soviet Union—sweeping aside party politics, the party politics—the average Russian is a very patriotic individual who will come to the defense of his motherland. Now, if he is convinced that his motherland is about to be attacked any day by the West, and especially the United States, his susceptibility to discipline at home is enhanced.

If that notion were dispelled, I would think that the Soviet leadership would have a great deal more difficulty than they would have today maintaining the internal order that they do. That is just one aspect of this problem.

Mr. BENTLEY. If I can just interject there, sir, I am speaking of the possibility, and I feel it is a possibility, of actually either violence or attempted violence during his tour of the United States.

Now, we all recall how indignant we as a people were when things happened to the Vice President during his tour of South America. Now, can you imagine the reaction on the part of the Russian people, to say nothing of Mr. Khrushchev, himself, if such should take place, and I say has that consideration been given serious thought before this invitation was issued?

Mr. MURPHY. Very much so, Congressman, it has. We appreciate that that is an element of risk. I suppose you could put it in a sense that you can't make omelets without breaking eggs. Occasionally you do have to take a risk. That is a risk involved.

I might say every conceivable precaution will be taken to prevent it if we can. Every effort will be extended. He is willing to take the risks.

Mr. BENTLEY. Does he know the risks?

Mr. MURPHY. I think he is aware of them.

Mr. BENTLEY. Do you think so?

Mr. MURPHY. I would think so, yes.

Certainly Mikoyan was and certainly Koslov was, and I doubt very much that he is not.

Mr. BENTLEY. I would like to come back to another question, but I imagine my time has expired.

Chairman MORGAN. You have 1 minute.

Mr. BENTLEY. I would like to ask if you can, insofar as this is an open hearing, tell us quickly what damaging actions, that you could put on the record, have occurred during the past year by people to whom you otherwise would refuse a passport who have been abroad?

Have people been in Vienna who have endangered the foreign policy of the United States?

What can you put on the record to give us concrete reasons for having this legislation?

Mr. MURPHY. I would think the attendance of, I believe, four American Communists at the party congress in Moscow was as good an example of what we are driving at as any. We know that these men are activists; we know that their conversations would relate to subversive activities in this country and we feel that their personal presence at the party congress in Moscow was a great boon to them and to the party effort.

Mr. BENTLEY. Excuse me just a minute, Mr. Secretary.

I think it would be helpful, Mr. Murphy, if you could furnish for the record some concrete, specific examples of such instances. I say I realize much of the subject must be classified, but what you can give us for the record I think would be helpful.

Mr. MURPHY. I will be very happy to.

(The information requested is as follows:

Since June of 1958 a considerable number of old-line, hard-core Communist Party members have come forward to get their passports. Some of them apparently have no present intention of traveling but want to be in a position to do so in the event the party decides they are needed someplace abroad.

Communist Party activities involving travel abroad have taken a noticeable upturn during the last year.

The Department has received information which shows a rather clear disposition on the part of Communist passport recipients to disregard the geographical restrictions in their passports. A number of such persons who, under our invalidated regulations would not have received passports, have, on receiving them, gone almost immediately into areas for which their passports are not valid.

It is difficult to estimate the extent to which the Communists have taken advantage of the gap in our system of laws designed to safeguard the national security since the Supreme Court decisions of June 1958. A large number of applications have been received from persons about whom the Department has some evidence of Communist affiliations. This number, of course, is increasing daily. Under the Department's previous regulations the record of these

persons' activities would have been scrutinized very carefully and further inquiries would have been made where necessary. There is no doubt that a substantial number of them would not have received passports under the procedures previously in effect. Some undoubtedly would have turned out to be eligible under the regulations and would have received passports. It is impossible to make an accurate estimate of the number in either category, however, since the Department does not feel that it can justify the time and the trouble involved in endeavoring to determine the extent of a person's connection with the Communist conspiracy when it can no longer deny passports on such grounds in any event.

The information the Department happens to have already available, of course, varies in each individual case. Some have previously applied for passports and were turned down; others are notorious or avowed members of the Communist Party; a great many others are persons about whom the Department has only fragmentary information. Some of the latter group might, on further inquiry, turn out to be no longer involved in Communist activities or relatively harmless joiners or dupes. However, others might well turn out to be extremely dangerous Communist activists.

It should be emphasized that there is presently no congressional authorization enabling the Department to deny passports to any member of the Communist Party, U.S.A. Any or all of them, those who have not already done so, could come in tomorrow and receive their passports merely by demonstrating their citizenship, except in the unusual case where they might also be a fugitive from justice or a law violator. Thus, a major aspect of the present danger is the total effect on the orderly conduct of our foreign policy and our national security involved in the completely unrestricted travel of as many proponents of the Communist conspiracy as it determines to have travel. The outside bounds of this loophole in our defenses are entirely up to the Communist apparatus to set.

The Communists have not hesitated, where their purposes could be served, to take full advantage of the opportunity open to them.

For example, James Jackson, a member of the Communist Party since 1933, and a member of the National Executive Committee of the Communist Party, recently went to Moscow to address the 21st Congress of the Communist Party of the Soviet Union as an official representative of the Communist Party of the United States of America. While there, he excoriated the United States in statements which, of course, were widely publicized by Radio Moscow. Jackson told the Department on his application that he wished a passport to visit France. There is no formal indication of what altered Jackson's travel plans; but, in any event, his mission was made much easier and his travels more convenient by the valid U.S. passport he had with him.

The general manager of The Worker, William Lorenzo Patterson, is at present a holder of a valid U.S. passport. Patterson, who runs The Worker and for years headed the Civil Rights Congress, has recently admitted under oath before a committee of the U.S. Senate that he was presently a member of the Communist Party. That Department does not know whether Mr. Patterson has yet traveled or where, although his passport application listed various countries in Europe and the Soviet Union. On previous trips abroad, however, Patterson was in close contact with Communist Party functionaries of other countries.

Anna Louise Strong, a life-long Communist, who had been previously denied passport facilities, traveled from Moscow into Communist China in late 1958, where, according to the Department's information, she has for months now participated actively in Peiping's "hate-America campaign."

The recent efforts of Harry Bridges to further his influence among labor movements of the maritime nations could, in the event of Communist-inspired aggression in the Far East or elsewhere, be a matter of gravest concern to this Government. The Department feels that these efforts were facilitated when it was required to afford him passport facilities. Mr. Bridges, according to our reports, traveled to such places as Tokyo and East Germany which were not included in the itinerary he furnished the Department on his passport application.

The Communist-sponsored Seventh World Youth Festival, held in Vienna, Austria, from July 26 to August 3 of this year, was one of the latest Soviet efforts to reap political and propaganda dividends. Intensive preparatory steps were undertaken by the Soviet-controlled organizations behind this festival and, within this country, all possible efforts were made to assure control over the approximately 350 Americans who were expected to attend the festival.

PASSPORT LEGISLATION

Fortunately, many of the young citizens who attended the festival were loyal Americans. Others, however, including many who were prominent in the festival organization and planning, were strongly pro-Communist and devotees of this Soviet propaganda show.

Among the Americans at the festival were youths already well indoctrinated along Communist lines. One festival participant had a background of active affiliation with the Labor Youth League and was associated with numerous Communist front organizations. This person has been prominent in the formation of a Communist Party youth group and was in attendance at a Communist Party function.

Another festival delegate, and one who was active in forming the American delegation, received previous organizational experience through the formation of a Marxist-Leninist organization under the authorization of a State Communist Party committee. This person has been active in Communist Party youth activities and reportedly is a member of the Communist Party.

A close relative of a prominent Communist was also a festival participant. This person's background includes close affiliation with Communist youth organizations and association with Communist-front organizations.

Two other persons, who attended the festival, have been affiliated with organizations created and dominated by the Communist Party for the purpose of attracting and indoctrinating American youths. One of these persons was a member of the executive committee of a Labor Youth League club.

These cases illustrate the type of youths selected by the Communists to represent the United States. The impressions they created and the impact of their actions are not easily gaged but they, and the others so trained and instructed, had as their purpose the discrediting of the loyal Americans who were present and, in every way possible, the embarrassment of this country, its policies, and its leaders.

Although concerned regarding the attendance of these and other persons at the festival, and fully aware of their Communist backgrounds and activities, the Department of State was nevertheless unable to deny any of them passport facilities.

There are set out below additional illustrations of the kind of individuals who have received passports subsequent to the Supreme Court decisions of June 1958.

CASE NO. 1

This person is a charter member of the Communist Party (CP). He founded and is president of International Publishers Co., Inc. He has held many top posts in the Communist Party during the past 30 years. He is believed to have acted as liaison man between the Communist Party and high ranking Soviets. He was a delegate to the Fourth Congress of the Communist International and has attended numerous high-level convention, conference, and committee meetings of the Communist Party in Russia, Germany, Canada, Mexico, France, and Cuba.

CASE NO. 2

This person has been identified with the Communist movement since the mid-1930's, and has been an elector for the presidential and vice presidential candidates on the Communist Party ticket. This person was reported to be a Communist Party member in Trieste, Italy, during the 1950's. In 1956 this person allegedly effected the transfer of funds to the Communist Party of Trieste.

CASE NO. 3

This person has been identified as a charter member of the Communist Party and is known to have been active in the Communist movement for the past 20-odd years. He was a delegate to the All-Slav Congress in Belgrade, Yugoslavia, in 1946.

CASE NO. 4

This person, in 1949, was a witness for the defense in the case of the *U.S. v. William Z. Foster*, and testified that he was a member of the Communist Party and had joined the Communist Party in 1929. He also testified that he had held numerous posts in the Communist Party, including membership on the national committee. In 1950 and 1954 he attended Communist Party meetings and conventions outside the United States. He has been recently characterized as one of the most important functionaries of the Communist Party.

CASE NO. 5

This person, a member of the Communist Party for many years and once a full-time paid functionary of the Communist Party, has also been active in the affairs of the Communist Party in England in recent years.

CASE NO. 6

This person, who has been identified as having held Communist Party membership under another name, has recently served as the private secretary of a prominent member of the American Communist group in another country.

CASE NO. 7

This person, who previously served as executive secretary of a Communist Party unit in New York, has reportedly toured the world as an international Communist courier.

CASE NO. 8

This person, allegedly a Communist Party member, was active in Communist-inspired front organizations and while enjoying the benefits of a U.S. passport, is reported to have attended an espionage training school abroad. She violated the travel restrictions in her passport during 1955 when she traveled in Poland, Czechoslovakia and the U.S.S.R. While residing abroad, subject married a Communist official of a foreign country and reportedly will seek to bring this person to the United States.

CASE NO. 9

This person reportedly held a previous assignment which involved furnishing information to officials of a Communist country as to the names of persons in this country who were active anti-Communists and who had relatives behind the Iron Curtain.

CASE NO. 10

This person has a long history of Communist Party activities, having served as a Communist Party functionary. She is reported to have visited Guatemala in 1954 and obtained information for the use of the Communist Party, U.S.A.

CASE NO. 11

This person previously traveled to Communist China, the Soviet Union, Poland, and Czechoslovakia in violation of the restrictions in his passport. He served as a delegate to the so-called Peiping Peace Conference, after which he condemned the United States for engaging in germ warfare.

CASE NO. 12

This person has been active in the Communist Party over an extended period of time, serving as a Communist Party functionary. She previously has attended a number of Communist-sponsored international conferences on both sides of the Iron Curtain.

CASE NO. 13

This person joined the Communist Party as early as 1924, and was, at one time, involved in a scheme of counterfeiting for the purpose of financing Soviet espionage. Using the birth certificate of a dead Communist, he obtained a passport under the name of the deceased and used this passport in furtherance of the counterfeiting scheme. Fortunately, he was apprehended, tried and convicted, but throughout his trial Communist Party financial assistance was provided. The Communist Party reportedly considered this person extremely loyal and following his conviction continued efforts were made to effect his release. He has now received a U.S. passport and is free to travel abroad wherever he may be ordered by the leaders of the Communist conspiracy.

CASE NO. 14

This person, with a long record of Communist affiliations, has resided abroad for an extensive period and has traveled throughout Western Europe, behind the Iron Curtain and in Communist China repeatedly ignoring travel restrictions.

imposed on his passport. He has continually criticized the United States as endorsing "slave labor" camps in the South. While visiting Communist China, he falsely charged that Chinese students were being forcibly detained in the United States. In speeches and writings he loudly praised Communist Chinese "advancements" and castigated high U.S. officials for what he termed discriminating actions against the Negro population. Much use was made in the Communist press of this person's attacks on the United States.

CASE NO. 15

This person, a longtime member of the Communist Party, is a specialist in the organization and recruiting fields. He has been extremely useful to the Communist Party over the years. Because of his organizational ability, he was transferred, apparently under Communist Party orders, to various sections of this country where he was able to supervise and direct Communist Party activities and members. He now has passport facilities and is free to extend his activities abroad.

Chairman MORGAN. Mr. Selden.

Mr. SELDEN. Thank you, Mr. Chairman.

Mr. Secretary, you know of my interest in this legislation. Also, you are aware that we were able to get through a bill last year that we felt was about the strongest we could get out of this committee under which the Department could operate.

My bill, H.R. 55, is identical to the one that passed the House. Had that legislation been enacted into law, would it have been possible to deny a passport to a person such as James Jackson, the secretary of the American Communist Party National Committee, who spoke in Moscow last March?

Mr. MURPHY. Mr. Congressman, could I ask—I am not as well acquainted with the details of these bills as perhaps I should be—the words "on the record," did they appear?

Mr. SELDEN. They did appear.

Mr. MURPHY. I think that would make it rather difficult for us to perhaps sustain it in the courts. We would have refused, had we had this legislation—the denial would have been made. Whether it would have been sustainable in the courts in the light of that language, I am not sure. That is a question we would have had to test out in the courts. I think the addition of those three words "on the record" would have made it much more difficult.

Mr. SELDEN. However, am I correct in assuming that you could have denied him a passport?

Mr. MURPHY. Yes, sir, and we certainly would have denied it.

Mr. HAYS. And it would still be in the courts, no doubt, since last March if you had denied it. He wouldn't have been there, in other words.

Mr. MURPHY. That is right. He would not have gotten a passport.

Chairman MORGAN. Mr. Secretary, would you permit me to call on Mr. Becker for his opinion?

STATEMENT OF HON. LOFTUS BECKER, LEGAL ADVISER,
DEPARTMENT OF STATE

Mr. BECKER. I think those words "on the record" might be interpreted by the court as requiring us to furnish the confidential information that we had. I think our attitude as a matter of policy, nevertheless, would have been to refuse to furnish it.

Mr. SELDEN. Would it have taken a great deal of confidential information as far as this particular person was concerned?

Mr. BECKER. I know he made a very inflammatory speech while he was in Moscow. I read the speech myself. You always have a little concern when you rely solely upon statements because a citizen here has a rather broad leeway as to what he can say in the United States and fundamentally there would be some question as to whether you would rely solely upon the type of thing he could say in the United States. It is certainly bad taste and he is not a good citizen to say it, but that is why we continually refer to these people as being activists, and the bills, as I understand them, require us to have some evidence of activities.

Mr. SELDEN. I might say that I have a copy of this speech, and I would like, Mr. Chairman, with your permission, to insert it in the record.

Chairman MORGAN. Without objection, it is so ordered.

(The statement is as follows:)

TEXT OF ADDRESS BY JAMES JACKSON, NATIONAL EXECUTIVE COMMITTEE, AMERICAN COMMUNIST PARTY, IN MOSCOW, MARCH 1959

Dear comrades, on the authority of our national executive committee and on behalf of our delegation, I bring you the heartfelt greetings of the Communist Party of the United States. [Applause.] Comrades, if President Eisenhower could say in truth what Premier Khrushchev stated as a simple matter of fact—that there is not one political prisoner in the country—several of our comrades might be here to greet you on this extraordinary occasion; our national secretary, Comrade Eugene Dennis, our honorary chairman, Comrade William Z. Foster, Comrades Hobson, Flynn, Davis [three names indistinct], and others; also our dear Comrades Henry Winston and Joe Green, who still languish in Federal prisons in our country.

Bold in its conception and scope, valiantly practical and attainable in each of its parts, Nikita Khrushchev's thesis for the 7-year plan has already attained the stature of a historic document. This distinction is assured it by the enthusiastic rally of the whole Soviet people pledged to carry to fulfillment without pause its inspired projections for the comprehensive development of their country and the possible further enrichment of their own material and cultural life.

The parallel [several words indistinct] the successful fulfillment of the control figures of this great program of construction, production, and cultural advance will carry the Soviet people and the U.S.S.R. past all [records] ever attained by capitalism, and onward into communism. [Applause.] Communists the world over will welcome the ideological contributions and profound insight in Comrade Khrushchev's report for the solution of a number of problems of the struggle for peace, democracy, national freedom, and socialism.

Speaking for the central committee of the CPSU, and in the name of all peoples of the U.S.S.R. Comrade Khrushchev has vowed before the whole world: "For our part, we shall do everything in our power to insure peace throughout the world." The challenge of the CPSU to the fraternal Communist parties everywhere is to work harder for the preservation and strengthening of peace.

The Communist Party of the United States of America will find great inspiration and powerful moral support in this challenge. Rest assured, comrades, that we shall not spare ourselves in the struggle to prevent imperialist adventurers and a handful of monopolists—the merchants of death—from pushing our country into a war whose outcome could only result in our national oblivion. [Applause.]

Certain imperialist circles within our country have brought great shame upon our country in Latin America, the Middle East, Hungary, and elsewhere. The leaders of our people, however, are increasingly struggling to remove these stains from our national honor, to establish a new course in foreign affairs, to replace brinkmanship with peace, economic blackmail with fair trade practices, enmity against the countries of socialism with new relations of friendship and coexistence.

I know, comrades, that there is much sympathetic curiosity among the fraternal parties concerning the situation of the Communist Party of the United States of

America. Suffice it for me to say, comrades, our party lives. [Applause.] It is among the masses and associated with their daily struggles for jobs, liberties, and peace, and its prospects for growth and influence and numbers are real prospects.

Our party has withstood severe persecution at the hands of the Government; it has cut out the ulcers of revisionism from its leadership and stopped the internal bleeding. Now, having extricated our party from the slimy grasp of the revisionists, our leading committee is firmly determined not to yield it into the hands of sectarians and dogmatists. We are building our party in the firm principles of Marxism and Leninism. [Applause—Ed.]

Comrades, I wish now to read the letter of greetings sent to the 21st Congress on behalf of the national committee of our party:

"The 21st Congress of the CPSU is a momentous event of great significance to the peoples throughout the world. It is a fitting prelude to the congress that its opening is preceded by new Socialist achievements in every sphere [as evidenced], by the great new advance in the conquest of space with the launching of Mehta. This epochal accomplishment has led to the greatest of admiration and respect among the American people, no less than among others. The new 7-year plan which the congresses will act upon is of historic significance. Not only is it a huge step forward in the building of communism in the U.S.S.R., but it will also have a tremendous impact on all peoples as a further demonstration of the enormous potential contained in the Socialist organization of society.

"To American workers, faced as they are by the chronic problems of mass unemployment and economic insecurity, it holds forth the living example of how a socialist society can provide full employment, rising living standards, and a securing of a richer life for all. For the Negro people—striving to throw off the shackles of discrimination and oppression and to achieve a standard of full equality, the equality and freedom of all nations and nationalities of the Soviet Union, participating side by side with the builders of communism—the new plan has a very special meaning.

"To millions of Americans, the widening prospects of trade with the U.S.S.R. and other Socialist countries which the new plan will greatly enhance, is a growing [instance] of the prospective source of increased production and employment. Among the American people there is a growing awareness of the signal importance of the projected 7-year plan in relation to the securing of peace and peaceful coexistence.

"The peace sentiments of the American people were demonstrated anew in the elections of last November, in which the voters expressed the demand for an end to brinkmanship and their desire for peace and friendship among nations. The sentiment for American-Soviet friendship and peaceful negotiations has received a great impetus from the [several words indistinct] and from the aid and support for the people in their struggle to end colonialism; and in that sense [word indistinct] also by the growing number of exchanges in business, cultural, scientific, political, and other figures between our countries, not the least of them the noteworthy visit to this country of Deputy Premier Anastas Mikoyan.

"On the occasion of the 21st congress, the Communist Party of the United States extends its warmest fraternal greetings to the great CPSU which, boldly applying and developing the principles of Marxism-Leninism [applause], is leading the Soviet people to ever new socialist accomplishments and onward to communism. May friendship between the Soviet and the American peoples continue to grow. [Applause.] May our two countries go forward in ever closer amity and peaceful competition to the solidarity of the working peoples of all countries and the fraternal relationship of the Communist and Workers Parties for ever stronger [word indistinct] in the cause of peace, democracy, and socialism.

"For the National Committee of the Communist Party of the United States, signed: Eugene Dennis, national secretary; Robert G. Thompson, executive secretary."

Mr. HAYS. What you are after, in other words, is a bill that will let you have the sole power down at State, without any judicial review to deny a passport. That is what you really want, isn't it?

Mr. BECKER. Well, Congressman, I don't think it is quite that broad. As you study the bill, I think you will see that in there there are some pretty substantial safeguards—

Mr. HAYS. This came out last year and your man then—I think his name was O'Connor—flatly admitted that it was true. What you wanted last year and what I understand you want this year, you want the power, if someone goes to court, to go into the court and say, “Well, we denied this, Your Honor, and we can’t tell you why we denied it. It is against the interests of the United States and might wreck our security system, so you have no recourse, Your Honor, but to take our word for it and go ahead and deny it.”

In other words, you object, according to Mr. Hanes, to the passage in my bill that lets the judge make this decision. I happen to have confidence in the judiciary, and I might say a good deal more than I have in Mr. Hanes and his Office, because, after all, the judiciary goes through a great deal more of a screening—and this is nothing personal against Mr. Hanes. I am talking of the Office as such and him and his predecessors and successors, whoever they may be, and whatever the administration may be.

Mr. MURPHY. We appreciate your point very much and basically sympathize with it, but we are in the situation where, except to give a summary of the information, we can’t go any further because the agencies that obtain this information simply won’t let us. I mean it is just a fact of life.

We simply won’t be able to make a case under those circumstances. It is just as simple as that.

Mr. HAYS. Well, if the judge decided that your summary shouldn’t be given, then I think you would be safe; and I think if the judge thought that it would violate your contacts with your agencies, he would, but I would rather have the judge make that decision than for you to make it. That is all I am interested in.

Mr. MURPHY. We would provide the summary, of course, in each case.

Mr. SELDEN. Mr. Secretary, under the bill H.R. 55—if a passport could be denied under the provisions of H.R. 55, don’t you think that it would have the effect of discouraging applications of many of the people who are now getting passports?

Mr. MURPHY. I am sure of that, and many would probably not apply at all.

Mr. SELDEN. So it would have the effect of denying many of these people passports who are now getting them and whose presence abroad could be harmful as far as the security of this country is concerned?

Mr. MURPHY. Certainly that is true, Mr. Congressman.

Mr. SELDEN. Thank you.

Chairman MORGAN. Mr. Wainwright.

Mr. WAINWRIGHT. Mr. Chairman, as usual, I am sorely tempted to rebut my distinguished colleague, Mr. Hays, who managed to bring in the election of 1960 and the President’s golf shoes.

Mr. HAYS. I will take it up with you if you can get some time on the networks, which you people seem to control. I would be happy to.

Mr. WAINWRIGHT. I knew I would get a rise.

Mr. HAYS. You can take Rockefeller, Nixon, and the whole crowd.

Mrs. BOLTON. Regular order, Mr. Chairman.

Chairman MORGAN. The regular order is requested.

Mr. WAINWRIGHT. Because of my belief in regular order, I will pass, Mr. Chairman.

Chairman MORGAN. Mr. Fountain.

Mr. FOUNTAIN. No questions, Mr. Chairman.

Chairman MORGAN. Mr. Coffin.

Mr. COFFIN. I just came in, Mr. Chairman, and I will pass.

Chairman MORGAN. Mr. Farbstein.

Mr. FARBSTEIN. Mr. Murphy, sticking to the issues, I would like to inquire of you whether or not you wouldn't equate denial of a passport with the approbrium that is attendant to the commission a crime or perhaps even worse?

Mr. MURPHY. Well, that is a question of opinion. I am sure that a respectable American citizen would consider it at least a great indignity, but I have a feeling that this does not apply to that type of citizen. The type citizen we are referring to is not in our opinion a loyal, dedicated citizen of the United States of America.

Now, if that is true, I would question whether his sentimental reaction is a matter of a great deal of interest to us.

Mr. FARBSTEIN. Aren't our criminal laws passed just as much to protect the innocent as to convict the guilty?

Mr. MURPHY. They certainly are. I do not regard this in the same nature as a criminal penalty, however. There is a distinction.

Mr. FARBSTEIN. I regard it as worse than a criminal penalty. Unless a man or woman is a traitor to his country, you will give him a passport; when you deny him a passport in my opinion it is the equivalent to calling him a traitor.

Mr. MURPHY. I should think that would be reflected in our statutes then, Congressman. As I see it, it is not.

Mr. FARBSTEIN. From a technical standpoint, you are correct, because the penalty for treason is greater than it is for larceny. But nevertheless, in my opinion the approbrium attached to the denial of a passport—except to the individual to whom it doesn't mean anything—would be the equivalent to being called a traitor, and that is the man I am seeking to protect if he is an honest and decent citizen and also a patriotic one.

Now you talk of activists. Your file, therefore, would contain facts which would disclose a situation of activity—Communist activity. I doubt that there would be a judge in this country to whom a file of that nature was presented that would permit the issuance of a passport. Do you deny that fact?

Mr. MURPHY. Well, it is a question of the willingness of the agencies involved who are obtaining this information. That is the practical point of our difficulty.

Take, for example, in breaking a code. It would be extremely difficult to get any agency involved in that procedure to be willing to divulge to anybody outside the executive branch how that information was obtained and we wouldn't ask them to do so. We would rather let the case go. We just can't make a case on that basis, Congressman.

Mr. FARBSTEIN. Against that you are getting no passport legislation at all.

Now if you weigh these things in the balance I would imagine you would be of a mind to trust the judge to determine any question in the event that a man takes an appeal from the denial of a passport. If there were an appeal taken by an individual who was denied a passport, in that situation it appears to me it would not be

deleterious to the interests of our Government if that file were opened to a judge to determine whether or not a passport should be issued.

Now basically and fundamentally, I don't think that you will have any disagreement here at all. Everybody wants a bill, but we want the right type of bill, and it is a question of what is right and what isn't.

I am inclined to believe for myself that it wouldn't be harmful to our interests if we allowed a judge to look at a file in the event that a man appealed from a denial of the issuance of a passport. By the same token I don't think that the State Department itself should be the only one to determine whether or not a passport should be issued or should not be issued. There should be a higher forum. That is my reaction to it.

Mr. ADAIR. Would the gentleman yield?

Mr. FARBSTEIN. Yes, of course.

Mr. ADAIR. How would the gentleman limit inspection of this file to the judge? Would he deny the rights of inspection to counsel then?

Mr. FARBSTEIN. Of course, he would deny it.

If you will read the Hays bill, the Hays bill says only in the event an appeal is taken from the denial of a passport, if the judge, on the face of it, feels that there is sufficient basis for the denial, he will deny the application.

If, on the other hand, he feels that on the face of it there isn't sufficient evidence to deny the passport, he then would take upon himself the right of examining the file to determine whether or not there is basis for the denial of that passport. I don't think thereby any interest could possibly be harmed—a lot of good could be done, and the determination would be a fair one.

Mr. ADAIR. If the gentleman will yield again, my point is specifically that in your contemplation no other individual, no matter what his capacity, would have the right to inspect that file?

Mr. FARBSTEIN. That is absolutely correct.

Mr. ADAIR. That it is turned over to the court?

Mr. FARBSTEIN. That is correct.

Mr. ADAIR. No one except the judge?

Mr. FARBSTEIN. That is right.

Mr. ADAIR. No clerk?

Mr. FARBSTEIN. That is correct.

Mr. ADAIR. No counsel?

Mr. FARBSTEIN. That is correct. I think that is what the Hays bill says.

Mr. ADAIR. I don't think it spells it out in that detail.

Mr. FARBSTEIN. In effect that is what it means.

Mr. HAYS. It doesn't spell it out in detail, but—I have no pride of authorship in this bill. I only put it in to try to give the Department what they wanted; a comprehensive bill. I personally would be willing to settle for what you have outlined, that the judge himself would have the right to the file and would not have the right to turn it over to anyone.

Mr. FARBSTEIN. I think it is in your bill.

Mr. HAYS. It says "the court." We didn't tie it down to the judge.

Mr. FARBSTEIN. If you could go along with the word "judge" instead of "court," I would be satisfied to have the word "judge" substituted for "court."

Mr. ADAIR. It would be more explicit.
Mr. FARBSTEIN. That would be satisfactory to me. I think we all want a bill but we want a fair bill that would not discriminate against the innocent man.

Chairman MORGAN. Mr. Murphy.

Mr. MURPHY. No questions.

Chairman MORGAN. Any further questions?

Mr. BURLESON. Mr. Chairman, may I make a comment?

Chairman MORGAN. Mr. Burleson.

Mr. BURLESON. There have been quite a few observations made and preoccupations expressed by reason of the Soviet Premier coming to the United States. It seems to me we are warranted in feeling that a mistake has been made in permitting people to come into the United States who misunderstand liberty. In the name of humanitarianism we have let enter this country people who only understand revolution. Under recommendations from numerous sources including the administration, we propose to let others come in who mistake freedom for license to cause such disturbances as we fear may occur during the visit of the Soviet Premier. I think we are warranted in taking note of that fact and to be guided somewhat less in our great ambitions to remove all people from areas where they don't want to be and bring them into the United States.

Thank you.

Mr. FARBSTEIN. Mr. Chairman.

Chairman MORGAN. Mr. Farbstein.

Mr. FARBSTEIN. Mr. Murphy, would you care to comment upon some of the things that I have stated?

Mr. MURPHY. If I may.

Chairman MORGAN. Surely.

Mr. MURPHY. First of all, I am so happy that you take this interest in this problem because we feel sure that out of this something is going to come, out of it is going to come some legislation that will be helpful to us.

On that particular point you make, I think we understand the implications of it and rather sympathize with your point of view, Congressman.

Our feeling also is that the average judge, I would imagine, would have a certain amount of respect for the integrity and the honesty and the competence of the Secretary of State in reviewing evidence that comes to him through the different channels that I mention.

Mr. FARBSTEIN. This would go before a U.S. district court judge and not a local municipal court judge.

Mr. MURPHY. And in providing that judge with the summary of it, the distillation of it, upon which the Secretary of State bases his decision, I would imagine a good many judges would be very happy to have it presented that way because they would have the assurance that it comes from a highly reputable, reliable source.

Now, if you feel that in every case the judge would have to take the entire dossier and go through it minutely and spend hours and hours and days perhaps on it, which have been spent in the investigation of the case, well, that is another matter, but we come back again always to that same problem that faces us as a practical matter. We would be delighted to be able to send down to the court everything

we have. It wouldn't cost us anything at all, but we simply aren't able to do it.

Mr. FARBSTEIN. Well, Mr. Murphy, let's assume all those around this table are reasonable people, and I don't think there is anybody around this table who would seek to throw roadblocks in the path of the State Department. And I think something could be worked out insofar as I see it, at least, if the Department would give some consideration to some of the views that I have expressed.

Mr. MURPHY. Thank you, sir.

May I ask Mr. Becker to speak?

Chairman MORGAN. Surely.

Mr. BECKER. I would like to add what Mr. Hanes pointed out the other day, and that is that this precise issue was considered on at least four separate occasions by the court of appeals and in each instance there was evidence in the open record and there was confidential information relied upon by the Secretary which was not disclosed to the court or to anybody else and in each of those four cases the court held that the rights of the defendant were not infringed by that use of confidential information. That indicates that the courts themselves do not feel the need of going into it. As a matter of fact, there are a number of decisions in which they have expressed reluctance and really felt it was not proper for them to go into intelligence and State information.

Mr. FARBSTEIN. If that is so, why are you afraid to submit to the court those facts and let the court decide whether it is necessary to go into them or not?

Mr. BECKER. As I have pointed out, we have already submitted it to the court four times and every time—we have been sustained all four times.

Mr. FARBSTEIN. You don't answer my question. What is the hesitancy about the Hays bill?

Mr. BECKER. Because it requires that information to be submitted to the court and we do not wish to do that.

Mr. HAYS. Would you yield to me?

Mr. FARBSTEIN. Yes.

Mr. HAYS. Would you have any objection to working out some language that required it only to be submitted then in case the court was dissatisfied with your summary? The alternative would be, of course, that the court would go ahead and order you to grant a passport unless you want to come up with further evidence.

Mr. MURPHY. That may be a very useful suggestion. We would like to study that a little bit.

Mr. HAYS. I would be willing to accept that. I mean I am not trying to throw any roadblocks; I am merely trying to make sure as it is humanly possible that this provides a true American review.

Chairman MORGAN. Mr. Bentley.

Mr. BENTLEY. Mr. Chairman, not being a lawyer myself, I would like to ask Mr. Becker to comment on this question for a moment from the standpoint of a conflict between the executive and the judicial branches of Government.

Now would you not get such a conflict if you gave judicial review or the power of judicial review over Executive actions in this particular case?

Mr. BECKER. That is the position that some of the courts have taken. They have refused to deal with that type material because they say it

is not appropriate. They don't have all the sources of information that the President has and many times you have to know other things in order to judge the impact of this particular information.

Mr. BENTLEY. Then let me ask this question in an effort to be helpful: Is it felt that the Board, which is the highest executive body passing on the application—that is correct, is it?

Mr. BECKER. Except for the Secretary.

Mr. BENTLEY. Is it felt that the Board and the Secretary have to have information other than this fair résumé of the evidence?

In other words, would this be possible—I am advancing a hypothetical theory now: Would it be possible for, let's say, the information transmitted to the Department by another agency of Government to be placed in résumé form and certified by that particular department as being a fair résumé of the evidence and then transmitted to the Board so the Board would have before it just the résumé, but with the certification? Do you follow me?

Mr. BECKER. I follow you, yes, sir.

Mr. BENTLEY. What do you think about it?

Mr. BECKER. It might be possible to do that. I think it would be preferable, however, for those who are in the executive and are passing on it, to have all the information before them. I think in part that is a protection to the individual because they exercise judgment on it.

Mr. BENTLEY. But the evaluating agency—but in the final analysis who evaluates the source or the credibility of information? Is it the Department or is it the transmitting agency?

Mr. BECKER. The usual transmitting agency invariably refuses to evaluate. It is done in the Department.

Mr. MURPHY. And frequently there is a good deal of questioning back and forth. I mean we don't always accept the flat statement.

Mr. BENTLEY. I was trying to advance the possibility that the Board and the district court might have the same information upon which to base their judgment which, of course, in that case would rule out the question of submitting anything other than the résumé to the district court if the Board had nothing but the résumé.

Mr. BECKER. I think there would be more protection for the individual if the entire record were considered by the Board. It is a matter of judgment.

Mr. BENTLEY. A judgment that you wish to confine to the administration?

Mr. BECKER. Yes, sir.

Chairman MORGAN. Mr. Coffin.

Mr. COFFIN. I would just like to have the references to the cases that you mentioned. Those four cases.

Chairman MORGAN. Will you put those in the record?

Mr. MURPHY. Yes, sir.

(The information requested is as follows:)

Boudin v. Dulles, 235 F. 2d 532 (1956); *Dayton v. Dulles*, 254 F. 2d 71 (1957); *Briehl v. Dulles*, 248 F. 2d 561 (1957); *Kent v. Dulles*, 248 F. 2d 600 (1957).

Mr. WAINWRIGHT. Dr. Morgan.

Chairman MORGAN. Mr. Wainwright.

Mr. WAINWRIGHT. Just out of curiosity, what would be the chances of this legislation reaching the floor and being debated this year, in the 2½ or 3 weeks remaining.

Chairman MORGAN. We have scheduled witnesses to appear tomorrow. We are not going to have a meeting on Thursday because there are two subcommittee meetings. Next week we hope to finish the hearings and start marking up a bill.

Mr. WAINWRIGHT. Well, do you think there is a chance for this subject, which is relatively controversial, being debated this year?

Chairman MORGAN. Last year we passed the passport bill without much debate during the last day of the session.

Mr. WAINWRIGHT. Do we have the same thing in mind this year?

Chairman MORGAN. It depends on how soon the bill is prepared by this committee. As soon as the bill is ready, the Chair will be glad to go to the leadership and see what can be worked out as to scheduling the bill.

Mr. WAINWRIGHT. Thank you.

Mr. HAYS. Mr. Chairman.

Chairman MORGAN. Mr. Hays.

Mr. HAYS. I just wanted to say unless the Senate passes a bill before the end of the session that I will object to any unanimous consent to bring the bill up like we did last year and pass it in 10 seconds, inasmuch as there is another session next year.

Mr. WAINWRIGHT. I just wanted that clarified.

Mr. HAYS. Well, that is the reason.

Mr. WAINWRIGHT. That was the reason for my question.

Mr. HAYS. I don't think we should pass it in 10 seconds when it isn't going to become law anyway.

We hope to have this building construction bill ready for the committee to consider and there is some urgency about it because they have no money left after this fiscal year.

Chairman MORGAN. Is the Senate also going to pass it?

Mr. HAYS. I understand they are waiting for us to send them over a bill. I don't know, and I don't care.

Mr. ZABLOCKI. Mr. Chairman, may I ask a question out of order so some of us may make proper plans and arrangements. Since we have the Secretary here, he probably could advise us: If the Congress is in session, is it the intention of the Department to request a joint session of Congress during the visit of Khrushchev?

Mr. MURPHY. No.

Mr. HAYS. What if he asks for one? What are you going to do?

Mr. MURPHY. He hasn't asked for one. If he asks for one perhaps we might inform you of his request.

Mr. ZABLOCKI. Isn't it customary for a chief of state to address the joint session of Congress?

Mr. MURPHY. This man is head of government. Mr. Voroshilov is the head of state.

Mr. FARBERSTEIN. I read that he stated he would like to address the Congress and that it was customary.

Mr. ZABLOCKI. Do you think we could maintain a quorum?

Mrs. BOLTON. The fact that he is not chief of state settles it.

Chairman MORGAN. Are there any further questions?

If not, the committee stands adjourned until 10:30 tomorrow morning.

(Whereupon, at 12:05 p.m., the committee recessed, to reconvene at 10:30 a. m., Wednesday, August 12, 1959.)

PASSPORT LEGISLATION

WEDNESDAY, AUGUST 12, 1959

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, D.C.

The committee met, pursuant to adjournment, at 11 a.m., in room G-3, U.S. Capitol, Hon. Thomas E. Morgan (chairman) presiding.

Chairman MORGAN. The committee will come to order.

This meeting is being held for further continuation of hearings on passport legislation. Several members of the committee have introduced bills which are before us.

Our witness this morning is a member of this committee from the minority side, the Honorable Alvin M. Bentley, who is testifying on H.R. 7006. Mr. Bentley, you may proceed.

STATEMENT OF HON. ALVIN M. BENTLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. BENTLEY. Thank you, Mr. Chairman, it is a pleasure to appear before the committee this morning in support of H.R. 7006. I have a prepared statement here and with your permission I will insert it in the record at this point and proceed informally.

Chairman MORGAN. You may proceed.

(The statement follows:)

Mr. Chairman and members of the Foreign Affairs Committee, I appreciate the opportunity to appear before you on behalf of a piece of legislation which is of great importance to the security of the United States. I refer to my bill, H.R. 7006, providing for the denial of passports to supporters of the international Communist movement, for review of passport denials, and for other purposes.

As members of the congressional committee concerned with the international relations of the United States, you well know the nature of the international Communist movement which is dedicated to subordinating the Government and people of the United States to its will through subversive means of all types. That this movement constitutes a threat to the security of the United States cannot be denied.

It commands a frightening portion of the world resources, including the assets of 16 once independent countries and 900 million people. It possesses the ability to establish vast networks of espionage apparatuses in countries not under its control and to claim absolute allegiance of misguided persons who, while holding citizenship in one country, in fact serve the ends of another country; namely, Russia.

Furthermore, the movement engages in its activities in a way which

makes the expression "cold war" a contradiction in terms; it has done and day and night will continue to do all in its power, however devious, deceitful or subversive these means may be, to fulfill its avowed and unchanging goal, that of world domination.

In recognizing this threat, Congress in 1954 declared that the role of the Communist Party in America, as an "instrumentality of a conspiracy to overthrow the Government of the United States," renders the party's existence a "clear, present and continuing danger to the security of the United States."

When a person is faced with a threat to his existence, he must meet it and try to erase it. Similarly, the United States must attempt to rid the world of the scourge of international communism. And since one of the ways in which international communism operates is through travel back and forth between various countries some of which it controls and others which it does not, one of the ways in which the United States can and must meet the Communist threat is through the prohibition of travel by the members of that movement to and from America.

One does not have to be a student of Communist organization to realize that travel, and the face to face contact that travel makes possible, is a vital cog in the operation of the international Communist movement. Only recently the Director of the Federal Bureau of Investigation reported to the Attorney General that—

At the present time the Soviets are intensifying their espionage activities in the United States. They are interested in all types of intelligence, especially military, atomic, missile, and related data. Also a revitalization of the party's internal structure is now underway. Leaders completely loyal to the Kremlin are in control. The result is a renewed party activity aimed at strengthening the Communist apparatus. At present a recruiting program is in progress. New officers are being selected in the Communist Party units across the country. The youth organization is being vitalized, schools are being held to train party leaders, and efforts are underway to increase overall party work.

How are the tough and new officers of the Communist organization in America to be recruited and trained if leaders of the international movement are to be prohibited from coming here and if the youth and leaders are prohibited from traveling abroad? And how is the communication necessary to the operation of the Communist organization to take place if international Communist leaders cannot meet each other face to face?

Communication through second-hand sources, such as through mail or through third parties, is not a good substitute for personal contact. The hampering of this contact by the United States places a severe handicap upon the effective operations of the Communist apparatus, especially since the Communists, being members of a secret, subversive, and illegal organization, prefer to communicate by word of mouth rather than by written word.

The Department of State has recognized that international travel by Communists enhances the aims of the international Communist movement and hence has in the past refused to allow foreign Communists to come to America or to allow Communists in the United States to travel abroad. The first matter was taken care of in the McCarran-Walter Act which prohibited the immigration of undesirable into this country. The second matter became official policy in 1952 when Secretary Acheson issued regulations establishing the criteria for refusing passports to Communists and Communist supporters.

It is this second matter with which we are concerned today. Upon the publication of the regulations concerning passport issuance, the Communists began to attempt to circumvent the regulations. Finally, in 1958, the Supreme Court decided by a 5-4 majority in the *Kent* and *Briehl* cases that Congress had not expressly given the Secretary of State the right to refuse to issue passports to undesirables and that therefore the Secretary was required to issue passports to any and all Americans who might request them. It should be noted that the Court did not rule on the constitutionality of the Secretary's refusal to issue passports to Communists; it merely declared that Congress had not yet given the Secretary the right to do this.

Immediately after the Court's decision the Department of State experienced a great increase in the number of passport applications from persons with records of Communist affiliations and activities. The issuance of passports to these persons has impaired, and if not stopped will continue to impair, American foreign policy by making possible to the international Communist movement the advantage of personal communication and discipline.

Therefore, the problem which Congress has before it today is to pass legislation enabling the Secretary of State to prevent the threat and harm done to the security of the United States by the travel of Communist sympathizers outside the United States for purposes of espionage to eventually overthrow our Government. And this is what my bill proposes to do; to give the Secretary of State the right and the power to refuse to issue passports to supporters of the international Communist movement.

This bill, a new act which adds to existing passport legislation, after explaining that—

the possession of a passport by (Communists) is inimical to the security and to the conduct of the foreign relations of the United States,

then authorizes the Secretary of State—

to refuse to issue a passport or to revoke a passport already issued to any person as to whom it is determined on substantial grounds that he knowingly engages in activities for the purpose of furthering the international Communist movement * * *.

Evidence of such activities is membership in the Communist Party or any "other facts which reasonably warrant the conclusion that the person is going or staying abroad" to abet the Communist cause.

The person who is refused a passport may request a hearing before a passport hearing board, established within the Department of State for this purpose. During the hearing proceedings the Board may take into consideration information which shall not be made a part of the open record; but the Board shall furnish to the individual requesting the passport a fair résumé of all confidential information. If the recommendation of the Board and the decision of the Secretary is adverse to the individual, he may then appeal to the U.S. District Court for the District of Columbia to determine whether there has been compliance with the provisions of this bill.

This, in summary form, is what the bill purports to do. Several objections against this bill have been raised and it is these with which I propose to deal. First, however, I should like to employ the support of the executive branch of the Government, which stands solidly behind this bill.

The late Secretary of State Dulles described the need for passport legislation last year before Congress. He said:

I think there can be no doubt in anyone's mind that we are today engaged for survival in a bitter struggle against the international Communist movement * * * (this) movement seeks everywhere to thwart U.S. foreign policy. It seeks on every front to influence foreign governments and peoples against the United States and eventually by every means, including violence, to encircle the United States and subordinate us to its will. The issuance of U.S. passports to supporters of that movement facilitates their travel to and in foreign countries. It clothes them when abroad with all the dignity and protection that our Government affords. Surely our Government should be in a position to deny passports to such persons.

President Eisenhower added:

It is essential that the Government today have power to deny passports where their possession would seriously impair the conduct of the foreign relations of the United States or would be inimical to the security of the United States * * *.

I wish to emphasize the urgency of the legislation I have recommended. Each day and week that passes without it exposes us to great danger. I hope the Congress will move promptly toward its enactment.

And just 1 week ago John W. Hanes, Jr., Administrator of Security and Consular Affairs of the Department of State came before this committee. He testified with reference to this bill, H.R. 7006:

We believe this is a good bill. We strongly support it and we hope the committee will report it favorably to the House.

Thus, my bill is the administration bill.

One objection to this bill concerns questions of its constitutionality. It must be reiterated that in its decision in the *Kent* and *Briehl* cases the Supreme Court did not rule on the constitutionality of the Secretary's restricting the right of persons to travel freely.

Furthermore, in a recent decision concerning the right to travel, the U.S. Circuit Court of Appeals in the District of Columbia ruled that—

the right to travel is a part of the right to liberty * * * but these valid generalizations do not support unrestrained conclusions. For the maintenance and preservation of liberty, individual rights must be restricted for various reasons from time to time; in case of a reasonably anticipated threat to security or to law and order, many acts by individuals can be restricted.

It is the contention of the administration and of myself, as well as many other persons, that the free travel of Communists out of and back into this country constitutes enough of a threat to the security of this country to warrant a slight restriction on the right of any person to be issued a passport.

Some persons would quarrel with this second point, too, however. They say that denying passports to American Communists will not really prevent them from leaving the country; the Communists can travel legally without a passport to Latin America and from there they can usually obtain illegal passage to wherever they wish to go behind the Iron Curtain.

While this is true, it is also true, on the authority of Mr. Hanes, that while the State Department was denying passports to Communists, "very few important members of the apparatus took advantage of this roundabout route."

The reason for this probably lies in the fact that this fairly cumbersome method would lay a greater part of the Communist organization open to the risk of being discovered; the more people involved in an

operation, especially a devious and illegal one attempting to maintain secrecy, the more chance of that secrecy breaking down at some point and then the whole operation becoming uncovered.

A third complaint voiced against this passport bill concerns the utilization by the Secretary of confidential material as part of the basis for his decision. Some persons feel that the use of this sort of information means using vague and unsubstantial gossip or allegations which could not stand up in the light of truth. This feeling is, of course, completely without foundation.

First, if a person is prepared to believe that a Secretary of State—and it is he who must always make the final decision in appeals on passport cases—would actually base a considered decision upon less than substantial and corroborated evidence, then that person must believe that our country's security is in far greater danger than that resulting from a capricious denial of passports. The reason why information cannot always be divulged is that to do so would cut the Government off from a similar supply of such information in the future.

If faced with the unhappy choice between exposing and thereby destroying a valuable and continuing source of information about the activities of the Communist conspiracy, and the issuing of a passport to a member of that conspiracy, the Government would reluctantly have to issue the passport as the lesser of two evils. This does not mean that such information comprises a very large part of any total case. Mr. Hanes stated last week:

It almost never does. But the part it does play is often vital in relating the various parts of the case.

Furthermore, as required in this bill, the Secretary would have to make "fair résumé" or any such information available to the individual denied a passport, who would then have the right to attempt to rebut this information. Under this procedure the Secretary could hardly, even if he were so disposed, render a decision based on malicious whisperings.

The fourth objection to the passport bill revolves around the fact that the Secretary will make unbridled and arbitrary use of his power in restricting the issuance of passports. This fear also has no foundation in fact. In discussing the necessity of passport legislation in July 1958, the President stated:

In exercising these necessary limitations on the issuance of passports, the executive branch is greatly concerned with seeing to it that the inherent rights of American citizens are preserved. Any limitations on the right to travel can only be tolerated in terms of overriding requirements of our national security, and must be subject to substantive and procedural guaranties.

This message sets the tone of the limits of the restriction of passport issuance. As Mr. Hanes added, in an address before the Chicago Council on Foreign Relations on March 24, 1959:

We do not seek statutory passport authority to stifle criticism of this Government or its policies. We do not believe that the passport should or can be used to restrict the movement of people who hold political, social, or economic opinions which are not of the orthodox American variety.

We do not seek or want authority to deny passports to any whose travel or activity abroad is merely an embarrassment to our country. I believe that the United States is strong enough to survive embarrassment if we must.

Neither do we wish to penalize loyal Americans who at one time, before the nature of the Communist conspiracy became as crystal clear as it is today,

may have sympathized with Communist theories or even belong to Communist organizations in this country.

All we seek, and what I feel we must have, is the capacity to protect ourselves by denying passports to those relatively few hard-core, active Communist supporters who are not ordinary American citizens and whose travel abroad constitutes a danger to the United States.

The "due process" clause of the Constitution further guarantees that the Secretary will not arbitrarily or capriciously restrict the individual's right of exit. Provision is made in this bill for extensive hearings before a passport board where the burden of the proof that an individual was or is a member of the Communist Party is put upon the Secretary of State; further provision is made for appeal to the U.S. District Court for the District of Columbia. In this connection it is interesting to note that even such citadels of democracy and individual rights as the United Kingdom, France, and Canada do not provide for any judicial review of passport denials.

Evidence that the Secretary has in the past been extremely careful in restricting passports lies in the fact that for the 2 calendar years preceding the Supreme Court's decision, only 51 out of over a million applications for passports were initially and tentatively turned down. Further, in the 6 years from 1952 to 1958, only 15 persons were flatly denied passports on Communist grounds after they had exhausted their administrative remedies.

This then is the case for my bill, H.R. 7006. As President Eisenhower stated, "I wish to emphasize the urgency of the legislation I have recommended." The international travel of Communists does greatly abet the effectiveness of the Communist cause and does impair the successful carrying out of U.S. foreign policy.

I have, in fact, had personal experience with the vast amount of damage that can be done by American Communists traveling abroad either for purposes of anti-American propaganda, espionage, or a variety of other reasons. The objections that passport restriction is unconstitutional, that it will not stop international travel anyway, that the use of confidential information is not right, and that the Secretary will make arbitrary and capricious use of his power to restrict the issuance of passports, all have no foundation in fact.

Therefore, I sincerely hope that this committee will speedily recommend passage of this bill to the House of Representatives. Also, of course, I will be happy to elaborate on any of the points made in rather summary form in this statement.

Mr. BENTLEY. In summary, Mr. Chairman, this bill, H.R. 7006, has been well summarized in the staff memorandum dated July 30, 1959, which all members of the committee have before them. It is a new act adding to existing legislation. It contains in section 1 the congressional findings with regard to members of the Communist Party and movements thereof.

In section 2 it would authorize the Secretary of State to refuse to issue a passport or to revoke a passport already issued on certain grounds which would include present membership in the Communist Party or former membership which would be terminated only for purposes of subterfuge, activities which would indicate that the person was acting under the discipline or control of the Communist Party or any other facts indicating that the potential traveler was enabled to

further, while abroad, the intentions of the international Communist movement.

Section 3 would require as a part of the passport application a statement under oath or affirmation to the effect that the individual has not been or was not at the present time for the past 10 years a member of the Communist Party.

Now we get into title II, Mr. Chairman, regarding procedure for denial and review. My bill would provide that after the application the passport would either have to be issued or the applicant would have to be informed in writing that his application was denied within a period of 90 days. If the passport was to be denied, revoked, or restricted other than for general reasons, the applicant should be notified in writing and notified of his right to a hearing before the passport hearing board.

The passport hearing board, under section 6 of my bill, would be composed of three officers of the Department of State which would be designated by the Secretary and would have jurisdiction in all cases where a hearing was required by the applicant within 30 days after his application had been denied, or after his passport had either been revoked or restricted.

Within 90 days after such a request would be received by the board, the board would have to hold a hearing and the people who would present the case of the Department of State through the board could not otherwise participate in the deliberations and recommendations of the board.

In proceedings before the passport hearing board, Mr. Chairman, the applicant would have the right, according to section 7, to appear in person and to be represented by counsel, to testify in his own behalf, present witnesses and other evidence, to cross-examine witnesses appearing, and to examine all evidence which is made a part of the open record and to examine a copy of the transcript of the open proceedings and to be furnished a copy upon request.

The same section does provide for the board to consider oral or documentary evidence which is not part of the open record, but it requires that before the board completes its proceedings that the applicant or the individual should be furnished with a résumé of any evidence which is not part of the open record by the board and the board would have to certify that it is a fair résumé.

Further, the board, in making final findings, would have to take into consideration the individual's inability, of course, to challenge information or to attack the credibility of sources of which he would not have been advised in full or which would not have been revealed to him.

After the proceedings, the board has to make its findings within 60 days and transmit the entire record to the Secretary of State for the final administrative determination, and I underline the word "administrative."

If the recommendation is adverse, the individual is to receive a copy of the recommendation by the board and its findings and conclusions and within 20 days following its receipt he can thereby submit written objections to the Secretary.

The Secretary is supposed to base his determination upon the entire record, the findings of the board and any objections that may be submitted by the individual.

The Secretary can either remand the case to the board and send it back for further proceedings or if he opposes the board he shall make appropriate written findings and conclusions.

Section 9 provides for judicial review by the U.S. District Court for the District of Columbia and—

in any such proceedings—

to read from the exact language of my bill—

* * * the court shall have power to determine whether any findings which are stated to be based upon the open record are supported by substantial evidence contained in that record, or, in the case of a résumé of evidence which was not made part of the open record in conformity with section 7(b) of this act, are supported by the résumé * * *

which, as I said earlier, has to be certified by the board to be a fair résumé of all information used in determining the particular case.

Now, Mr. Chairman, I have here copies of letters from two of the executive departments which have been received by you as chairman of the committee; one from the Department of State, dated June 4, stating:

The Department strongly supports H.R. 7006 and favors its early enactment into law.

In other words, the State Department endorses my bill without reservation.

The other, which is dated June 4, is from the Department of Justice.

The Department of Justice supports my bill with some suggestions which I would be perfectly happy to see adopted by the committee.

As I think the committee will recall from Mr. Hanes' testimony of last week, he has been authorized by the Department of Justice to say that they do support my legislation with, as I say, one or two suggested changes of a technical nature.

I have here this report of June 17 from the Department of Justice. The Department does suggest that the bill not be confined to Communist activities and suggests that the bill might possibly be broadened to include subversives who are not affiliated with the Communist movement and also suggests that, among other reasons for denying the bill would be a finding that the travel abroad by the individual would seriously impair the conduct of the foreign relations of the United States, and would be harmful to the security of the United States.

The other suggestion is that in place of limiting the duration of the proposed legislation to the proclamation of national emergency, the Department of Justice suggests that the provisions would continue in force until such time as either the Congress or the President should determine and declare that the activities of the international Communist movement no longer requires their application.

That amendment would be acceptable to me and I understand it would also be acceptable to the Department of State.

With respect to the suggestion that the bill be broadened to include individuals other than followers, members, or supporters of the Communist movement, it is my feeling—and I think that feeling is somewhat shared by the State Department, that although perhaps broader passport legislation is certainly a good thing, the urgency with which the administration and the Department regards this problem is due primarily, if not solely, to the danger arising to our country from

travel abroad by Communists and therefore the State Department prefers that the question be limited at this time, as I say, to members, et cetera, of the Communist Party and I believe that the Department generally goes along with that.

I think the Department of Justice perhaps may be a little concerned about the fact that we are trying to single out Communists and not deal with people other than Communists whose travel abroad would also be prejudicial to our national interest but as Mr. Hanes said last week, that Department does support H.R. 7006 and the State Department supports it strongly.

One more thing that I would like to put into the record though, Mr. Chairman, if I may and that is—I think this would be pertinent and helpful to the committee, and I am referring to a committee document entitled "Passports and the Right To Travel: a Study of Administrative Control of the Citizen," which was prepared by the Legislative Reference Service of the Library of Congress dated July 10, 1958, and, of course, printed for the use of this committee. I don't believe this was made a part of the hearings last year, was it?

Chairman MORGAN. No, sir.

Mr. BENTLEY. I would like to read the conclusions in this without going through the whole document, though I would refer this document to any member of the committee particularly interested.

On page 35 of this document, Mr. Chairman, the following conclusions are reached by the study, respecting the Federal control of a citizen's right to a passport:

A. The citizen has a constitutional right of personal liberty which includes the right of locomotion, i.e., to travel.

B. The Secretary of State has a right to exercise official discretion in the issuance of passports.

C. Neither of these rights is absolute nor can they be exercised arbitrarily by the citizen or the Secretary.

D. Prior to 1914 these rights did not come into conflict, hence the lack of litigation.

E. With the growth of foreign passport restrictions, a passport has become a necessity to the exercise of the citizen's right to travel in peacetime.

F. In a war or emergency situation [such as we are in now] the Federal Government may, through the use of its war powers, restrict the citizen's right to a passport.

G. Such war restrictions on the citizen's right to a passport must be exercised with due regard to the due process provisions of the fifth amendment, preserving a balance between the exigencies of the war and the citizen's constitutional right.

H. Peacetime regulation of the citizen's "liberty" or right to travel, i.e., to a passport, must be in pursuance of the "lawmaking functions of Congress with standards established adequate to pass scrutiny by the accepted tests" and with due regard to the citizen's constitutional rights.

I thought it would be helpful to have that in the record and I recommend this study to those members of the committee who are either not familiar with it or who have forgotten it. I have found it very valuable indeed in studying this entire problem.

Thank you, Mr. Chairman. That is all I have to offer.

Chairman MORGAN. Thank you, Mr. Bentley.

Mr. Bentley, I understand from your testimony that the State Department and the Department of Justice strongly recommend the adoption of your bill.

Mr. BENTLEY. The State Department, sir, recommends it strongly. The Department of Justice, with these minor reservations which I have tried to outline further, recommends it.

Chairman MORGAN. They also recommend the Selden bill?

Mr. BENTLEY. I think the Department of Justice—and I have here copies of the State Department's and the Department of Justice's reports on Mr. Selden's bill. Here is one on the Selden bill from the Department of Justice dated April 16, 1959. Here is one from the Department of State on the Selden bill dated April 10, 1959. They comment on many other bills besides H.R. 55, the Selden bill.

I think their conclusion is that they would accept the Selden bill, but, at least as far as the State Department is concerned, they would then find it necessary to augment the provisions in Mr. Selden's bill, H.R. 55, with various administrative regulations, which would be spelled out by the adoption of my bill. In other words, Mr. Chairman, it is a question as to whether the committee would want to let the Department of State pass or promulgate these various administrative regulations necessary for the control of passports or whether the committee and the Congress would prefer to write into legislation the instructions to the executive branch of Government which they would have to follow both for the purposes of administrative and judicial review.

Chairman MORGAN. But is my understanding correct that Mr. Hanes did testify that if the Selden bill was adopted by both branches of Congress the State Department thought it would do the job?

Mr. BENTLEY. They will accept the Selden bill, Mr. Chairman. Of that I have no fear. It is just as I say, whether the Congress prefers to leave the matter up to the State Department to issue these regulations or whether the Congress would prefer to spell out in legislative form the regulations which it feels the State Department should follow.

Chairman MORGAN. Mr. Bentley, you have a time limitation in your bill, do you not, the period between the application and denial?

Mr. BENTLEY. The passport application has to be acted on within 90 days.

Chairman MORGAN. That is not in the Selden bill, is it?

Mr. BENTLEY. I don't believe so. I am not too familiar with everything in H.R. 55. I don't recall that that is in the Selden bill. I can be mistaken.

Mr. SELDEN. That is not in the Selden bill, Mr. Chairman.

Mr. BENTLEY. No, I don't think there is any time limit in the Selden bill actually, Mr. Chairman. That would have to be left up to the Department.

Chairman MORGAN. Under your bill, a passport hearing board is established?

Mr. BENTLEY. Yes.

Chairman MORGAN. Who would be members?

Mr. BENTLEY. Three officers of the Department of State designated by the Secretary.

Chairman MORGAN. You don't spell out the names or titles of any of the officers.

Mr. BENTLEY. No.

Chairman MORGAN. What would be connected with the Passport Office?

Mr. BENTLEY. I imagine that would be left up to the Secretary as to who he would appoint. Presumably I imagine one would be connected with the Bureau of Security and Consular Affairs. Probably

one would be from the Legal Adviser's Office and one conceivably might be from the geographic desk representing the political section or geographical area where the man intended to travel.

Mrs. BOLTON. It would not be a static board, then, changing from case to case?

Mr. BENTLEY. My bill does not specifically cover the situation, Mrs. Bolton, but I feel the Secretary could set up a board for an individual case or could have a permanent board. Personally I would like to see a particular board set up because I think that the problems, for example, with respect to an individual, say, traveling to Soviet-controlled Europe, or with respect to an individual traveling in south Asia, might be very different and I think there should be different personnel on the Board.

That is again left to the discretion of the Secretary.

Chairman MORGAN. Mr. Bentley, I have just one more question: Both your bill and the Selden bill are aimed primarily at individuals affiliated with the Communist movement. Neither one of your bills is an overall passport bill?

Mr. BENTLEY. No, sir.

Mr. Selden's bill covers in section 6 certain members or former members of the Communist Party or persons who have been supporting the Communist movement since 1948, as I understand it. The personal provisions of my bill pretty much cover the same things. I think perhaps they spell it out in a little more detail on page 3 of my bill than Mr. Selden does but the objectives, of course, are the same. We do not try to go beyond members, supporters, agents of the Communist movement.

Chairman MORGAN. Mr. Bentley, in the letter from the Department of Justice signed by Paul A. Sweeney, Acting Assistant Attorney General, Office of the Legal Counsel, he states:

In my opinion the revised draft would be strengthened considerably if section 2(a) were not restricted to Communist activities.

Would you comment?

Mr. BENTLEY. He makes the same comment about the Selden bill, too, I believe, but as I say, on the testimony of Mr. Hanes last week, the Department of Justice concurs in the bill—both bills—but would like to see it perhaps broadened at some future date by more comprehensive legislation. But I think the Department of Justice concurs that the urgency of the situation, Mr. Chairman, is now, because of the movement of Communists or Communist sympathizers and supporters, and therefore they do support this type of restrictive legislation.

Chairman MORGAN. Thank you, Mr. Bentley.

Mrs. Bolton?

Mrs. BOLTON. I don't think I have anything on Mr. Bentley's bill. I like it very much.

The language is clear enough for me to understand it, not being a lawyer.

Mr. BENTLEY. Nor am I a lawyer, Mrs. Bolton, but I can understand most of it, anyway.

Chairman MORGAN. Mrs. Kelly?

Mrs. KELLY. Mr. Chairman—Mr. Bentley, I welcome you here this morning. It seems unusual having you as a witness before your own

committee. I think there is one weakness in your bill. Under section 6 you are having a person bear the responsibility of proving himself innocent right after having him actually declared guilty by the State Department, before being associated with the Communist movement. Is that right?

Mr. BENTLEY. I don't know that the person would come before the Board with a presumption of innocence or guilt. I think the question is that the passport has been denied, revoked, or restricted in its use by the Department. The Board is then established for the purpose of allowing the person to present his own evidence, his own support, his own witnesses, whatever else he wants to present.

The Board makes up its mind. The Board then furnishes—assuming the passport is not granted—furnishes a report of its findings to the individual as well as to the Secretary of State. The individual does have a chance to reply in writing, to state his written objections to the Secretary. The Secretary makes a final determination—that is, administratively speaking. If the applicant wants to pursue it further, then, of course, it goes to the U.S. district court for judicial review.

I think, and I am not sure whether it was Mr. Hanes or Mr. Murphy who testified on this subject, but they said it was their belief that many people who had received passports over the past several months, because of the ruling of the Supreme Court, they felt it was their belief that such individuals, if they had been refused by the Department, would never have pursued the matter further.

Mrs. KELLY. If that is the case, this would be sort of public knowledge at this point.

Mr. BENTLEY. It certainly would.

Mrs. KELLY. Then why couldn't you combine the section in your bill with that in Mr. Selden's—do not deny a passport until after the hearings, and so forth.

Mr. BENTLEY. The status of the application would be in somewhat of a suspended status as long as the applicant was pursuing the various courses of appeal opened to him. The denial or the revocation or the restriction is only necessary for the board to come into existence and for the hearing to take place. There would be no final action as far as the application was concerned until it had been pursued as far as the applicant wished to pursue it.

Mrs. KELLY. In other words, you contend that in section 8 of Mr. Selden's bill that there would have to be a denial possibly, too, in order to bring a review up.

Mr. BENTLEY. Well, yes; because there would be no purpose in having the review unless the passport had been denied and the applicant, as I say, wished to pursue it into the courts.

I might point out, incidentally, Mrs. Kelly, if I may, the distinction between my bill and Mr. Selden's bill in that respect. He permits judicial review in any of the district courts. My bill limits it to the district court for the District of Columbia. That is merely for the purpose of convenience for the Department of Justice. I feel it would be a mistake to pursue this matter, judicially speaking, throughout the entire country.

Mr. SELDEN. Would the gentlewoman yield?

Mrs. KELLY. Yes.

Mr. SELDEN. Wouldn't it also be inconvenient for a man in San Francisco to apply for a passport and have to come all the way to Washington to have his case reviewed when he could have done so in the district court of San Francisco?

Mr. BENTLEY. I suppose there would be some inconvenience. It would be a question of how much trouble he wanted to go through to pursue his application.

The fact that there is a certain amount of evidence to be collected and presented in this case would seem to me that it would be from the administrative standpoint more convenient to have it centralized and it is my impression that the Department of Justice has some hesitation about throwing this open to any district court in the United States, although I don't know that they make that statement.

Mr. SELDEN. It would seem to me that since the burden of proof is on the Department of State the person involved certainly shouldn't be made to come to Washington to support his case when the Government has the necessary facilities in San Francisco or Seattle or New Orleans.

Mrs. BOLTON. Will the gentleman yield?

Mrs. KELLY. No; it is my time.

Mr. BENTLEY. I am reading from page 3, Mr. Selden, of the Department of Justice's letter with regard to your bill:

Section 8 also provides that judicial review shall be in the district courts of the United States.

This probably means the district in which the applicant resides.

Section 8 does not state against whom the action should be brought or the time within which action may be brought; the standards to guide the court in its review; or the relief which the court may grant. It would be desirable for review to be limited to the United States District Court for the District of Columbia so that the work of the Department of State and its officials who might be involved as witnesses be disrupted as little as possible.

Mrs. KELLY. Would you then have the way paid to Washington for this person to appear at this hearing?

Mr. BENTLEY. Well, that is a good point.

Mrs. KELLY. The question of expense would be greater on the United States possibly if witnesses from here had to go out to San Francisco, because there would possibly be more fares.

I would like to have you comment on that.

Mr. BENTLEY. That is an interesting point, Mrs. Kelly. I frankly haven't considered it. I suppose we might say that the costs of the individual's travel to Washington could be borne by the Government. Possibly you might leave it up to the decision of the court. If the applicant is successful in pursuing his case before the court maybe the Government should stand his expenses. If the applicant is turned down by the court maybe he should be expected to bear the costs. I really haven't considered that but it is an interesting point.

Mr. SELDEN. Will the gentlewoman yield?

Mrs. KELLY. Yes, Mr. Selden.

Mr. SELDEN. As you may remember, we went into this subject very thoroughly last year and had extended hearings. Also, we worked closely with the Justice Department and the State Department. It was determined by the committee that it would be better to have the cases heard in any of the district courts rather than in the District Court of the District of Columbia alone.

Mrs. BOLTON. That would mean that any confidential information would be here in Washington, it wouldn't be out in that district court. Somebody would have to get it together and run the risk of losing it and take it across. There would not be too much saving of expense because whoever would take it from Washington to the district court in question would be involved. If there is nothing of that type required that is different.

Mrs. KELLY. I am not sure that is correct because I know there was certain information maintained in the New York area, particularly if it is FBI, and not in Washington, though the ultimate decision is made in Washington. So the material is probably in the district where the person resides.

I yield back my time unless Mr. Bentley wants to answer.

Mr. BENTLEY. I have no further comment on that other than the Department of Justice's comment which is dated last April, of course.

Chairman MORGAN. Dr. Judd?

Mr. JUDD. No questions.

Chairman MORGAN. Mr. Selden?

Mr. SELDEN. No questions.

Chairman MORGAN. Mr. Pilcher?

Mr. PILCHER. No questions.

Chairman MORGAN. Mr. Meyer?

Mr. MEYER. Mr. Chairman, thank you.

I would like to pursue that matter a little further: In my own case, for instance, if I had wanted to travel, with the job that I held I would have had a limited amount of time to travel and I would have had a minimum of funds with which to travel. Therefore, the provisions of this bill could conceivably have been used to prevent me from traveling and to rob me of my rights as a citizen because I could not afford to come to Washington. Furthermore, without having the evidence so-called, against me, (if false charges had been made) I wouldn't have been able to get a case together, to get an attorney to represent me or anything else, and the net effect is that this kind of legislation in my opinion would prevent anyone other than a relatively wealthy person or a person with a lot of leisure time, from defending his own rights. Is this not true, Mr. Bentley?

Mr. BENTLEY. Mr. Meyer, I will certainly grant your contention that the applicant would be involved in considerable personal expense if he wished to pursue the case all the way up to the District Court, or district courts, as the case may be, but I balance against that, and offer against that, the national interests of this country which I think frankly override any personal inconvenience or expense on the part of a passport applicant.

After all, if the applicant intends to travel abroad, he is presumably a man of some means and I think, as I say, the national interests of this country which we have heard from testimony from the executive branch, are in jeopardy because of the unrestricted travel of Communists at the present time, have to be balanced against personal inconvenience or expense although I will admit your contention that a certain amount of personal expense would be involved if the person desires to pursue it to its ultimate conclusion.

Mr. MEYER. I meant to point out that the cost would be prohibitive in my own case and I would also like to mention another thing. I be-

lieve, due to some recent decisions, the State Department was told that relative to some questions they were asking people who applied for passports, they could no longer demand that they answer, and yet the State Department continued to use the same forms. The average person thought that he would have to fill in these answers and the State Department in reply to an inquiry said that the continuance of the use of these forms was a measure of economy.

Well, if the State Department is interested in saving a few dollars on the printing of a form, I should think the individual citizen might also be interested in saving his money, too.

Another thing I would like to bring out is that it appears to me that the arbitrary denial of the right to travel to a certain extent is contrary to the American ideal regardless of the motivation and desires of the State Department. Isn't this true, in a way?

Mr. BENTLEY. I think, Mr. Chairman, that Mr. Hanes has submitted or was asked to submit for the record the Department's position with respect to the constitutional right of travel and their belief that on the other hand the possession of a passport and the privileges that a bearer of a passport possesses are regarded not as a right but a privilege.

I know he was asked to submit that for the record. I don't know whether he has done that or not.

I can merely refer you, Mr. Meyer, to this committee print which I quoted from, where the conclusion is reached that during a time of emergency, which situation we are now living in, that the Secretary of State has a right to exercise certain discretion as to who should and should not receive a passport without thereby infringing on the constitutional right of travel.

Chairman MORGAN. That request was made but the material hasn't been submitted. (See p. 33.)

Mr. MEYER. I happen to believe that it is wrong to permit the State Department to make the issuance of passports an instrument of foreign policy and I also happen to think that in actuality travel control is to a certain extent thought control. I think that the Secretary of State hasn't in the past had the right to prohibit people from traveling, either to friendly or unfriendly countries in peacetime.

Now, we could say that this is wartime but officially it is peacetime, isn't it?

Mr. BENTLEY. Officially, it is a period of national emergency. I take it, Mr. Meyer, that you are not directing your remarks solely against my bill, but you are opposed to any legislation of this type whether advanced by me, Mr. Selden, or any other Member of the Congress; is that correct, sir?

Mr. MEYER. I am opposing anything without adequate safeguards for the constitutional rights of the American people. If those safeguards are in it and if it is done in a way that makes it practical for the ordinary citizen who isn't wealthy to defend himself, that is a different matter.

Mrs. BOLTON. Mr. Chairman, may I ask our colleague what he would consider adequate—

Chairman MORGAN. Will you yield to Mrs. Bolton, Mr. Meyer?

Mr. MEYER. Surely.

Mrs. BOLTON. What would you consider adequate safeguards? Would you tell us what you mean by that?

Mr. MEYER. I would think if it was the case of a board, and this bill mentioned only "a" board, there would have to be provisions in the bill to take care of travel expenses and the expenses of the individual. In a way he is declared guilty rather than proven guilty. I think there should be definite provision for travel funds, at least. And I think that furthermore the burden of proof should be upon the State Department or upon the Government, and that they should have to disclose all of their information and the source of it as well.

Mr. BENTLEY. Well, Mr. Meyer, if I can comment on that, the Department witnesses who have been up here have made very clear that in such cases if they were required to disclose all evidence and its sources that in many cases they would be unable to pursue the case because of the inability to secure from other agencies and departments of the Government the right to make such revelations, or they would be unable to secure from those departments any information if they had to disclose the sources and I am sure that you and all of us are well aware of just what that would entail if the information, all types of information, all sources from which the information was derived, had to be revealed in open hearings.

Mr. MEYER. I am aware of that, but I think that is a decision that they must make since they by their actions are depriving American citizens of their constitutional rights if they don't do it. And, furthermore, they have already, in a way, installed control of the press by actions of this type.

Mr. BENTLEY. Mr. Meyer, it seems to be a question of fundamental definitions. I admit the constitutional right to travel, but I don't admit that a person has a constitutional right to possess a passport.

Mr. PILCHER. Will the gentleman yield?

Mr. MEYER. Surely.

Mr. PILCHER. Do you know of any specific case of any individual that the State Department has ever turned down a passport for, that you would have given one to?

Mr. MEYER. No, I do not because I haven't gone into any detailed cases. Just the subject in general.

Mr. JUDD. Will the gentleman yield to me for just a comment?

Mr. MEYER. Surely.

Mr. JUDD. I think the record should show that we are not dealing there with a constitutional question. The Supreme Court in the decision which led to the need for this legislation said it was not making its decision on a constitutional basis, it was overthrowing the existing practice of denying passports only because Congress had never provided legislation authorizing the State Department to do so, but it didn't say it would be unconstitutional for us to pass such legislation.

Mr. MEYER. They weren't asked to rule on that matter, were they, Mr. Judd?

Mr. JUDD. No, but they went out of their way to point out they were not ruling on the constitutionality. They were just saying that State didn't have the authority in law to take the action which, as far as they were concerned, was constitutional if authorized by Congress.

Chairman MORGAN. Mr. Wainwright, any questions?

Mr. WAINWRIGHT. No, thank you, Dr. Morgan.

Chairman MORGAN. Mr. Bowles?

Mr. BOWLES. I have no questions.

Chairman MORGAN. Are there any further questions to be directed to the witness?

Thank you, Mr. Bentley.

Mr. JUDD. I think Mr. Bentley ought to be complimented for the work he has done on this, and his bringing out additional important points.

Mr. BENTLEY. Thank you.

Chairman MORGAN. Our next witness is Mr. Selden, who, as you know, was the author of the bill which passed the House last year and is the author of H.R. 55 which is identical to 17 other bills that have been introduced by other members.

STATEMENT OF HON. ARMISTEAD I. SELDEN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. SELDEN. As you know, Mr. Chairman, last year I introduced a bill, H.R. 13760, that provided for the denial of passports to persons knowingly engaged in activities intended to further the international Communist movement. Although this measure was approved by the House on August 23, 1958, without a dissenting vote, there was not sufficient time before adjournment for the Senate to consider it.

On January 7 of this year, I introduced an identical bill, H.R. 55, which is now before this committee. On several occasions since, I have called to the attention of the House the vital need for enactment of this legislation at an early date.

Many persons with known records of Communist affiliations have received passports since last June when the Supreme Court of the United States held that the Secretary of State, under existing law, has no authority to deny passports to members of the Communist Party. In addition, a deluge of people with records of Communist affiliations have applied for passports since the Supreme Court's decisions of last June, and applications are still flowing in to the Passport Office.

It is a well-known fact that international travel is one of the principal means whereby the Communist conspiracy is promoted. Its couriers travel from foreign capital to foreign capital, carrying with them in their minds the orders and directives of the Politburo and of Peiping. In this manner, detection is avoided and personal contacts between members of the conspiracy can be furthered. Also, there have been repeated instances where affiliates of the Communist movement travel abroad to engage in activities harmful to the security of the United States, such as inciting revolt against friendly governments, engaging in untruthful propaganda against the United States, and giving aid and comfort to our enemies even while we are engaged in active hostilities with those enemies.

A case in point concerns James Jackson, secretary of the Communist Party of the United States. On February 2 of this year, he told the Soviet Congress that if President Eisenhower could say, as Nikita Khrushchev did in his report, that in the United States there is not a single political prisoner, then many leaders of the Communist and workers movement of the United States would be able to be present there and to greet the delegates of the Congress.

In 1933 the Soviet Government was recognized on the basis of formal agreement by its Foreign Minister that there would be no Moscow-directed, or assisted, Communist activity in the United States. Yet an American Communist, James Jackson, has the insolence publicly to report in Moscow that the American Communist Party "takes part in the daily fight to improve workers."

This American speaker traveled to Moscow on a valid U.S. passport. He was therefore entitled to the aid of American officials overseas and to good treatment by foreign governments. Our Secretary of State was unable, as the result of two Supreme Court decisions, to deny a passport to Jackson and consequently to keep him from wrapping himself in the protection of the American flag.

Although no one believes more firmly in free speech than I, I do not feel that we can condone the practice of giving a passport to a man so that he can attack the United States before a foreign policy-making body. Nor do I believe that we can condone the practice of letting American Communists travel abroad who serve the Soviet Union as espionage agents, couriers, and saboteurs.

The President of the United States made it clear in a special message to Congress last July that quick action is necessary to protect us from this dangerous practice. The following month the House passed the bill that would give the Secretary of State, subject to administrative and judicial review, the necessary authority to deny passports to members of the Communist Party.

As I pointed out earlier, the measure I have introduced this year (H.R. 55) is identical to the one passed overwhelmingly by the House last year. This bill provides that passports may be denied by the Secretary of State to three categories of persons: (1) a member or former member of the Communist Party, (2) an individual who is affiliated with the Communist Party, and (3) an individual who knowingly engages or has engaged since 1948 in activities intended to further the international Communist movement.

In all three categories, however, the Secretary of State is required to make an affirmative showing that the activities or presence of the person abroad would be harmful to the security of the United States.

In spite of what may be said to the contrary, this legislation provides firm safeguards for the rights of the individual. Section 8 of the bill contains a positive provision for an administrative hearing. In addition, there is a provision for judicial review in the district courts of the United States. These provisions are intended to insure that no Secretary of State arbitrarily infringes on the rights of citizens and to insure that the requirements of due process of law shall be met.

This legislation was carefully and thoroughly considered by the members of the Committee on Foreign Affairs last year. At least 10 different bills were on the committee calendar, and the measure which we reported underwent a detailed and searching analysis. I might also add that the bill was reported by the committee without a dissenting vote.

Although this legislation is more restricted than the bill originally requested by the administration, it grants the necessary authority to the Secretary of State and, at the same time, provides adequate safeguards for the rights of the individual. Since it was approved with-

out a dissenting vote by the committee last year and was subsequently given unanimous approval by the House, I do not believe there can be any question as to the soundness of the legislation. The need for it cannot be overemphasized. Each day that the Secretary of State goes without the authority provided for in the legislation increases our vulnerability to the dangers of international communism.

Chairman MORGAN. Thank you, Mr. Selden.

Mr. Selden, will you go into detail concerning section 8, particularly as to how the three words "on the record" become a part of this bill?

Mr. SELDEN. That is the only thing in the bill which was not there when we considered it on the floor of the House. The only way we could get the bill scheduled last year was to put in those three words. After consulting with the chairman, Mr. Vorys, and Dr. Judd, we determined that this would be much better than no bill at all. The State Department indicated that they could operate under this legislation, although possibly not as well as without the words "on the record." The amendment was offered on the floor of the House and was accepted.

Chairman MORGAN. Mr. Selden, do I understand last week when Mr. Hanes testified he testified that the words were objectionable to him but if the bill did pass in the final form with the words in, they felt they could still live with the bill?

Mr. SELDEN. That is my understanding.

Also, I might point out that Under Secretary Murphy in answer to my inquiry yesterday, indicated that if this legislation were in being there probably would be many to whom they are now granting passports who would never request a passport. If it reached a point where the person involved carried his case to the district court and all evidence had to be put on the record, perhaps they would have to issue the passport. But many, many applicants with a record of activities in communism would be eliminated as a result of the passage of legislation of this type.

Chairman MORGAN. Thank you, Mr. Selden.

Mrs. Bolton?

Mrs. BOLTON. I think I have no questions. You have settled my "on the record" question.

Chairman MORGAN. Mr. Pilcher?

Mr. PILCHER. No questions.

Chairman MORGAN. Dr. Judd?

Mr. JUDD. Thank you, Mr. Chairman. I want to underline what Mr. Selden has said as a very concise and accurate review of all the things that went on last year. I think a good many of us would rather not have had the words "on the record." It is the old problem, as Abraham Lincoln stated it, how can a government be strong enough to defend and preserve itself without being so strong as to deny the individual rights of its citizens. And as usual, we wind up with a compromise. Under this language the tough Communist who has the full resources of the party behind him and knowing that the only evidence they had on him was obtained secretly in a way they couldn't reveal without wrecking their channels of gathering further information, would know that the State Department would have to give him a passport. The hard-boiled ones—some of them—would get by.

There is no question about it. It is not a perfect or complete protection. But this bill would take care of most of them, perhaps 75 or 80 percent of them and that is worth doing. We shouldn't refuse to do all that we can do just because it isn't a perfect operation.

I am in favor of all the things that are in the Bentley bill and the things that the State Department would like to have, but I recognize the practical fact that we probably did about the best we could last year and I would rather hope, Mr. Chairman, the committee would vote out the Selden bill, I myself having introduced an identical bill. We can pass that bill this session. Otherwise, we will have 5 more months in which the couriers continue to run abroad, assuming the Senate would act even in January, which we can't assume.

I have no further comment and I have no questions.

Chairman MORGAN. Mr. Meyer?

Mr. MEYER. I am very grateful for the explanation Mr. Selden gave and I certainly see the logic and reason in his position but I would like to point out one thing that has happened to me personally. One of my constituents wrote a letter to the newspaper in which he stated that, whereas he didn't say that Bill Meyer—because he knew me personally—that Bill Meyer was a Communist, he said because of a certain position I took on a certain foreign policy issue, more or less his words went on to say that I supported the Communist movement or Communist objective, and these words to a certain extent are somewhat similar to the words in this bill and I would be concerned that I myself under this bill could be denied a passport.

Mr. SELDEN. Do you want me to comment on that?

Mr. MEYER. Yes.

Mr. SELDEN. Well, I think if you will read section 6 carefully you will see there are a good many things in that section that have to be considered before anyone can deny a passport to an individual.

First, he has to be either a member or a former member, or affiliated with the Communist Party, or who knowingly engages or has engaged in activities intended to further the international Communist movement. Second, it must be determined that his or her activities or presence abroad would under the findings made in section 5—which you would want to read carefully—be harmful to the security of the United States.

So I hardly think under the case that you gave that a passport could be denied, or there would be any effort made to deny it.

Mr. MEYER. Normally I don't think it would if the language is read clearly and understood—a lot depends upon the interpretation of those to whom the authority is turned over.

Mr. SELDEN. Well, of course, the only way you can protect the individual under conditions of this type is to grant them review, both administrative and judicial, and this bill takes care of that.

It is a pretty hard thing to protect this country against them when you are cloaking them with the American flag and letting them travel wherever they want to go under those circumstances.

I think under the terms of this bill that there will be a minimum of harm and it will be extremely helpful, and probably no one will ever get hurt under it.

Mr. MEYER. I realize the problem and I realize it is complicated and I know the further comment I am going to make doesn't apply

directly to this issue, but it does indirectly. Even a man with the stature of Justice Douglas, for instance, was denied, shall we say, what was his privilege or right in going to Red China because for certain reasons the State Department didn't really want him to go there.

Mr. SELDON. Has the State Department issued passports for anybody to go to Red China?

Mr. MEYER. Very few, I imagine. I don't know.

Mr. SELDON. Have they?

Mr. JUDD. Oh, yes, they offered passports to a whole group of newspapermen and the Chinese Communists wouldn't give them visas.

Mr. SELDON. I didn't say offered, I said issued.

Mr. JUDD. No.

Mr. SELDON. There have been none issued as far as I know. Am I right?

Mr. JUDD. There have been some issued.

Chairman MORGAN. Very few.

Mr. BENTLEY. I think the finding of the State Department was that Justice Douglas was not a newspaper correspondent.

Mr. JUDD. Will the gentleman yield?

Mr. MEYER. Yes.

Mr. JUDD. On this language, "engaged since 1948 in activities intended to further the international Communist movement," are you suggesting that because you have done some things for other reasons that somebody could claim assisted the international Communist movement, you might be denied a passport on that basis? I think most of us could be denied one if that were the basis. I have done some things for reasons I thought were valid which it has been claimed by others were furthering the Communist movement. I have been accused of being an agent of Chiang Kai-shek, as if I were getting some money around the corner or disloyal to the United States.

This is one of the hazards of being in public life.

There are a lot of people in this country today who believe that the activities or even presence of our President in Moscow in November or December will "further the international Communist movement." But I don't think any court would ever hold he was engaged in activities "intended to further the international Communist movement." That is the point.

He is going there to try to help to check that movement. It could turn out to be otherwise. He realizes that. His activities could further rather than hinder the movement. But his intention is not to further it; it is the opposite.

That language, I think, protects anybody from any possibility of being held by a court to have intended to further the international Communist movement unless it had a lot of substantial evidence that he was trying to further it rather than trying, as you were in your case, to protect the rights of American citizens.

Mr. MEYER. I didn't mean to be arguing for myself, but I was arguing for the possible interpretation of the language that could hurt people who didn't have either the funds or the ability to really defend their rights.

Mr. SELDEN. I might point out again, in section 8, it says, "No application for passport may be denied under section 6 of this act except after opportunity for hearing." That is administrative hearing.

Section 8 also provides:

Denial of a passport pursuant to section 6 of this act shall be subject to judicial review on the record in the district court of the United States.

This takes care of the travel situation you discussed earlier, Mr. Meyer.

Mr. BENTLEY. Mr. Chairman.

Chairman MORGAN. Mr. Bentley.

Mr. BENTLEY. I don't want my remarks to be construed as criticism of H.R. 55 because we have the same objectives, but I would like to ask you about certain things which H.R. 55 doesn't contain.

In the first place, there are no—I will use that wonderful word—"evidentiary" provisions in this. There is nothing indicated as to what the Secretary has to consider in making his findings, is there?

Mr. SELDEN. Let me say this: You and I know that after this bill was introduced the State Department sent up their comments on it and gave recommendations which they felt would improve the bill, which they should have done.

Your bill was introduced in accordance with the recommendations that were made in connection with this bill by the State Department.

Mr. Hanes testified in open session the other day that while your bill went into more detail, that under the terms of H.R. 55 the State Department could set up the necessary administrative procedure. We could write this procedure into the law if we so desired. But if we did not write it into the law, then of course, the State Department would set up administrative procedure along lines provided in your legislation.

Let me say again, the precedent is here; the bill has been passed, and if the Department of State can operate under it—which they have indicated they can—then let's not confuse the issue. Let's report the bill approved unanimously last year, both by this committee and the House of Representatives.

Mr. BENTLEY. Let me make three observations, if I may. In the first place, H.R. 55 has no overall time limitation.

Secondly, H.R. 55 has no limitation of time with respect to the finding or the action of the Department after the passport is applied for.

Thirdly, H.R. 55 only pertains to denial of passports and does not pertain to either revocation or restriction of passports.

Would those three statements be correct, Mr. Selden?

Mr. SELDEN. I think probably on their face those statements are correct.

Mr. BENTLEY. You and I certainly have the same objectives, and it is merely, in my way of thinking, Mr. Chairman, a question of whether or not the Congress wishes to pass legislation which would then in effect put the responsibility on the State Department and the Secretary to issue administrative rulings for the purpose of administrative review—I don't think you could issue regulations as to the question of judicial review—or whether the Congress wishes to spell out carefully and specifically the provisions which should be followed, both in the cases of administrative and judicial review, in the case of adverse action on a passport application.

I think, sir, that is the whole decision before us. I mean other than that the Selden bill and the Bentley bill seem to me to be nearly identical. It is merely a matter of choice as to whether the Congress wishes to leave the responsibility in the hands of the State Depart-

ment—as I say, I don't know who would be required to spell out the conditions pertaining to judicial review contained in section 8 of Mr. Selden's bill or whether the Congress wishes to write careful and specific legislation such as they have told me the language of H.R. 7006 contains.

I think that is the question the committee and the Congress would have before it in considering these pieces of legislation. Otherwise, they are nearly identical. Certainly, they are identical in their objectives.

Chairman MORGAN. Mr. Bentley, that is exactly what I wanted in the record—a description of the difference between the two bills.

Mr. BENTLEY. May I ask though, Mr. Chairman, in that connection, the Secretary, if the Selden bill were passed, could, of course, promulgate and issue administrative regulations to provide for administrative review, but where would the conditions, Mr. Selden, of judicial review, as contained in section 8 of your bill—how would the specific procedure be determined?

Mr. SELDEN. That would be determined by the court.

Mr. BENTLEY. In other words, you would place the responsibility on the Federal district courts to individually determine the procedure which they would follow in applying judicial review?

Mr. SELDEN. Yes.

Mr. BENTLEY. Wouldn't it be conceivable one district court might follow one procedure and one another?

Mr. SELDEN. I don't think so.

Mr. BENTLEY. Very frankly, I have confidence in the Secretary and the Department of State issuing regulations with respect to administrative review, but when you leave the responsibility of determining procedure for judicial review in the hands of the court, or the courts all over the country, without even limiting it to this district court here in the District of Columbia, I just wonder if that isn't a gap.

Mr. SELDEN. Have you set out in your bill provisions for judicial review?

Mr. BENTLEY. Yes, sir; section 9, page 7.

Mr. SELDEN. However, you don't set out the procedure the court must follow.

Mr. BENTLEY. The court shall have power to determine, as to the findings by the Passport Control Board, the Passport Hearing Board, and the Secretary of State, and it says what the court is to consider.

Mr. SELDEN. They certainly would have the same authority under this section 8 in my bill.

Mr. BENTLEY. I raise the question, Mr. Selden, and I raise it seriously as to whether or not you would want the District Courts throughout the country, each of them to follow their own procedure.

Mr. SELDEN. You will find the district courts throughout the country follow generally the Federal Rules of Procedure. Their review of passport denials would be similar in all district courts.

You haven't set up in section 9 of your bill how the court will be operated.

Mr. BENTLEY. I think it has been spelled out a little more carefully as to just what they ought to consider, but let me ask you just one more question: Did you intend to limit this to passport denials?

In other words, if a person's passport is revoked or a person's passport is restricted, then your bill would not apply?

Mr. SELDEN. H.R. 55 deals with denial of passports.

Mr. BENTLEY. Only denial?

Mr. SELDEN. That is correct.

Mr. BENTLEY. In other words, if a person has a passport and you take it away from him, he has no recourse?

Mr. SELDEN. H.R. 55 would apply to the denial of passports in the future.

Mr. BENTLEY. If he has a passport and it is removed or taken away from him or canceled—

Mr. SELDEN. They would have to proceed under the present law.

Mr. BENTLEY. Under the present law the person would have no appeal.

Mr. SELDEN. I think you will find the decision of the Supreme Court was made in connection with the denial of passports.

Mr. BENTLEY. Thank you, Mr. Chairman.

Chairman MORGAN. Mr. Fulton, Mr. Selden is the witness. Have you any questions?

Mr. FULTON. Was there any idea before the committee of possibly putting on an added provision giving the Department power in certain cases to require the returning U.S. citizen to apply for a reentry permit where they could examine him as to what his actions are abroad?

That is, in addition to the question of the passport legislation. I am simply asking that as a possibility of an added remedy or an added field of investigation.

Mr. SELDEN. Mr. Fulton, I have simply made a statement on the bill that I introduced and Mr. Bentley has done the same. We haven't reached the point of adopting a bill. We were just pointing out what the different bills covered.

Mr. FULTON. Could I ask either of you two people who have sponsored the bills, do you feel that, even though there is the possibility of the fifth amendment being taken that it might be wise to have some sort of an additional reentry permit upon coming back into the United States that they would have to apply for, which would make some people feel, "We are not going abroad. We might not get back unless we go through a hard examination of our activities, or would have to plead the fifth amendment."

Mr. BENTLEY. Now, Mr. Chairman, may I speak to that a moment?

Chairman MORGAN. Mr. Bentley is recognized.

Mr. BENTLEY. There I think we run into the question of the constitutional right of travel, Mr. Fulton.

Assuming a person applied for reentry to the United States after having been abroad, but refused—either to submit to this questioning or refused to make application for reentry permit or gave unsatisfactory or evasive answers, let's say—do you think constitutionally you could deny an American citizen the right to reenter his own country?

Mr. FULTON. I don't think you would deny him entrance, but you would certainly put him in jail or fine him for what he has done that is in violation of the law, upon reentry.

You see, it gives you an act upon which to act, while with the passport provision alone you are simply saying that because of the man's

previous actions in this country—of which he hasn't been convicted in many cases—and his intent to go abroad to be an activist, that you are then going to put a limitation on his right to travel abroad.

Mine is a suggestion possibly to add on an application for a reentry permit under which he can then be examined under oath and then if he lies, you might very well pick him up and put him in jail for 6 months.

Mr. SELDEN. Suppose you don't give him the reentry permit? Then where does he go? Who takes him? Who can we force to keep him?

Mr. FULTON. Well, if he applies for a reentry permit he must then justify the actions that he has taken abroad. He can be examined at the time of a reentry permit.

Mr. SELDEN. But suppose we determine as a result of those activities we won't give him a reentry permit. Then where does he go?

Mr. FULTON. Well, that is the obverse of the same coin. Because under your bill, you are saying if he might do wrong as a future intention, we will not let him travel; we will hold him right here. My point is if the individual has gone abroad and actually has carried out his intent and you can pin him down as having taken these actions, then when he comes in, have him apply for a reentry permit and you have actions to base the legal procedure.

I think under the Smith Act you may be weak because you are acting only on intention.

Mrs. BOLTON. Will the gentleman yield?

Chairman MORGAN. Regular order, please.

Mr. Fulton has the time.

Mr. FULTON. I yield to Mr. Bentley.

Mr. BENTLEY. Suppose the individual, for example, has returned from a youth congress behind the Iron Curtain, and he immediately applies—he comes back to the States and applies for his reentry permit presumably at the point of entry, is that correct?

Mr. FULTON. That is correct. Under your bill suppose they made a mistake and let him go out.

Mr. BENTLEY. Suppose that the information which would have to be reviewed for the purposes of determining whether or not he should get the reentry permit were—well, suppose it took several weeks to collect it, to amass it, to bring it back. Are you going to keep the man in a state of suspense as to reentry until all the information is correlated from maybe several foreign countries?

Mr. FULTON. We have that on every visa we issue. We check to see whether the person is morally competent to come into this country on every visa.

I am not going to hold him up a long time, but I am sure our people know who were agents abroad and we can tell the ones right away who have been in touch that we suspect of ill-advised action against U.S. security.

Then we say to them just as we do in the Un-American Activities Committee: "What have you been doing?"

And my position then is, there is then an offense if they tell a lie under oath on such examination.

Mr. SELDEN. Suppose they can't qualify for reentry permits? What happens to them? Do you keep them out of this country?

Mr. FULTON. At the time of getting their reentry permit they are put under oath. You see, even though they might force their way back in by a court decision, they still will have to go through the process of explaining their actions abroad under oath.

Mr. SELDEN. I understand that but let us suppose it is determined that a reentry permit should be denied. Then where does he go?

Mr. FULTON. Permit me to open your concepts on that. There are two possibilities. You put a condition on his reentry rather than blocking his reentry. It is a conditional reentry. That when he comes in he must explain under oath what his activities are abroad.

Mrs. BOLTON. Mr. Chairman, will the gentleman yield?

Chairman MORGAN. Mr. Bentley, will you yield?

Mr. BENTLEY. Yes.

Mrs. BOLTON. Who gets these reentry permits, all of us when we go over?

Mr. JUDD. Certainly.

Mrs. BOLTON. You say "when he gets a reentry permit." I might be just as suspiciously considered. If I am not under surveillance, I go over and come back without a reentry permit, but are we going to insist on the additional reentry permit as they do in some countries? Everybody who goes out has to have one to get back in?

Mr. FULTON. You see, when a person applies for a U.S. passport, you would have a reentry permit that you would apply for, and in your case, Mrs. Bolton, prima facie, you would get it automatically with no trouble.

Mrs. BOLTON. I am not talking about me at all. I am talking about the general public. We are sending them over by the millions. Are we going to issue millions of reentry permits?

Mr. FULTON. The general public will automatically in most cases get its reentry permit, but where there is suspicion, then that person going abroad is already on notice that he is going to have to be subjected to an inquiry under oath as to what he has been doing abroad. I think you may put quite a limit on what some of them may be going abroad for. Many will think they are not going to go through that procedure when they come back in.

Mr. JUDD. Will the gentleman yield?

Mr. FULTON. I will be glad to.

Mr. JUDD. Under such an arrangement we would certainly get into unconstitutional snooping and invasion of the privacy of individuals. We would be violating the Constitution in its guarantee that a man is secure in his papers. We could engage in a "fishing expedition" on every returning citizen. It would be like entering a man's house without a search warrant—entering his mind without a search warrant—issued by a justice of the peace or a court to the effect that there is enough evidence to entitle invasion of the man's privacy.

Mr. FULTON. Are you against the Un-American Activities Committee investigating citizens?

Mr. JUDD. No.

Mr. FULTON. Why do you object to such an examination in selected cases when he returns to this country?

Mr. JUDD. That committee doesn't call him up and ask him general questions in a fishing expedition; they call him up on the basis of

some evidence they have that the man has been engaged in improper or un-American activities and they ask him about those activities.

It is quite different from asking a citizen, "What did you do and whom did you see and where did you go and how much did you drink and where did you sleep?"

Mr. FULTON. I am surprised. I thought you would be my strongest supporter.

Chairman MORGAN. The committee stands adjourned until 10:30 Tuesday morning.

(Whereupon, at 12:10 p.m., the committee was adjourned, to reconvene at 10:30 a.m., Tuesday, August 18, 1959.)

PASSPORT LEGISLATION

TUESDAY, AUGUST 18, 1959

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, D.C.

The committee met, pursuant to adjournment, at 10:50 a.m., in room G-3, U.S. Capitol, Hon. Thomas E. Morgan (chairman) presiding.

Chairman MORGAN. The committee will come to order.

This is an open session in continuation of our hearing on passport control legislation.

Before we hear our witness, there are four Members of Congress who have submitted statements; Hon. Paul G. Rogers of Florida, Hon. Walt Horan from Washington, Hon. Thomas P. Curtis of Missouri, and Hon. Craig Hosmer of California.

Without objection, these statements will be incorporated in the record.

(The statements referred to follow:)

STATEMENT OF HON. PAUL G. ROGERS, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF FLORIDA

Mr. Chairman and members of this distinguished committee, I appreciate the opportunity to offer a statement today on my proposal, H.R. 6537, and others under consideration which would grant authority to the Secretary of State to deny passports to Communists and known sympathizers.

If ever there was a time in our history when we should take positive steps to close the loopholes in our national security network, that time is now. Should we doubt the wisdom of this statement, we have only to look to the impasse reached around the conference table at Geneva. The Communists have time and time again displayed an unwillingness to honorably negotiate the momentous issues facing the world today. Their leader has publicly promised to "bury" us. This signal warning should serve to stir even the most complacent and apathetic of us into concerted action aimed at self-protection and preservation.

Since the passage of the Subversive Activities Control Act of 1950, the effectiveness of the efforts of agencies entrusted with our national security has been lessened in many instances by adverse decisions of our highest Court. This has been due in part to the absence of a clear legislative mandate in some of the fields in which the Government has sought to operate. For the most part, however, these decisions seem to reflect a reluctance on the part of the Court to strike a balance between the rights of the individual on one hand and the dictates of our national well being on the other. While this balance is admittedly very delicate, it does not require a stretch of the imagination to envision a political system in which all individual rights are subverted to those of the state.

Realizing that these decisions have had the effect of seriously hampering our efforts toward self-protection, the American Bar Association recommended certain proposals designed to offset their effect. The measures under discussion today are intended to implement one of these recommendations.

Historically speaking, the Secretary of State has always been empowered to refuse passports to persons whose presence abroad might adversely affect our foreign policy or endanger our national security. These determinations, however, have not been based on statutory provisions. Thus, the Supreme Court decided

recently that the Secretary of State could not legally deny passports to Communists or Communist sympathizers. This decision resulted in passport applications from almost 400 people believed to come under the category denied passports under the proposed legislation. World domination, the ultimate aim of communism, is dependent on free and unrestricted travel of its advocates, whether they be American or otherwise. To permit these people such an opportunity is to permit them to broadcast their distortions and untruths about our way of life while at the same time affording them the protection of the Government they are attempting to undermine.

There is nothing arbitrary or capricious involved here. Provision is made for a full administrative hearing which requires that the Secretary of State show cause why a passport should be denied. Nor is it a question of denying the right of an individual to entertain unorthodox political, economic, or social views so long as these views do not endanger our security. What is involved, however, is whether our democratic ideals and institutions will be able to withstand the assaults leveled against them from within and without if we do not take steps to substantially strengthen and protect them.

Thank you again, Mr. Chairman, and I hope that the committee will look favorably on these proposals.

STATEMENT OF HON. WAIT HORAN, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF WASHINGTON (FIFTH DISTRICT)

I want to thank you for allowing me to appear before you today on behalf of this legislation which provides for the denial of passports for persons knowingly engaged in Communist activities. I believe this measure is as important to the welfare of our country as any to come before the Congress in recent years, and I sincerely hope that you take favorable action on it soon.

Since the Supreme Court handed down its decision that the Secretary of State could not refuse an American passport to a citizen of the United States even though the individual be a known Communist, there has been literally a flood of applications for passports by individuals that the State Department has reason to suspect are Communists in their affiliations and activities.

It is reported that many of those who rushed to get passports have shown no inclination to use them immediately. This may be because they fear that Congress will enact remedial legislation that will vest specific statutory authority in the Secretary of State to deprive American passports in such cases.

I believe President Eisenhower expressed the urgent need for this measure when he said, "Each day and week that passes without it exposes us to great danger." I certainly agree with him.

Mr. John W. Hanes, Jr., Administrator of the Bureau of Security and Consular Affairs, also pointed up the need for action when he said: "All we seek, and what I feel we must have, is the capacity to protect ourselves by denying passports to those relatively few hardcore, active Communist supporters who are not ordinary American citizens and whose travel abroad constitutes a danger to the United States."

I firmly believe that such dangers do exist, and the majority of Americans are depending upon the Congress to enact the necessary protective legislation.

In closing I want to say that I agree with the principle of freedom of travel except when that freedom is detrimental to the security of our country. In such case, I do feel that some restrictions on that freedom must be imposed.

Thank you.

STATEMENT OF HON. THOMAS B. CURTIS A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MISSOURI, RE H.R. 5455

Mr. Chairman, there has been considerable amount of discussion relating to the need for adequate passport legislation. In my opinion, the present laws are inadequate to provide for the travel needs of our citizens. In response to this need, I have introduced H.R. 5455, to establish a national policy relating to the U.S. citizen's travel abroad; to establish a service within the Department of State which shall be responsible for the direction, administration, and execution of passports and travel documentation for American citizens and nationals in the United States and abroad; to prescribe procedures relating to the issuance of passports; to establish terms of validity of passports; to establish fees for passports, and for other purposes.

Following the recent Supreme Court cases—Briehl, Dayton, and Kent—a plethora of legislation has been introduced in both chambers of the Congress relating particularly to various types of limitation on the individual citizen's right to travel. In view of this, I think it incumbent upon us to give serious consideration to the nature of the individual's right to travel. In my opinion, the right to travel is of equal dignity with our basic freedoms set forth in the first amendment. The constitutional basis for this conclusion is the provision contained in the fifth amendment wherein it is provided that no person shall be deprived of life, liberty, or property without due process of law. Certainly "liberty" means that the individual citizen has the right to do what he wants, go where he wants, say what he wants as long as in so doing he stays within the respected mandate of "the general welfare of the people." It is only when a clash arises between the individual rights of a citizen on one hand and the collective rights of the citizen on the other, that the former must yield to the latter, but only to the extent that the former will, by so doing, more fully realize his rights as a member of the latter. This yardstick that is applied to measure the length and breadth of the individual rights of our citizens finds application in the area of this right to travel. We erect stop signs and street lights and promulgate rules of procedure for conduct in and on our highways. We do this not with the express purpose in mind of encroaching on the individual's freedom to travel but we do so with the purpose of facilitating travel to enable the individual to more fully enjoy and make use of his individual right to travel.

Stop signs and street lights facilitate travel and passports facilitate travel. The real reason we require passports is because foreign countries require passports. These countries want to know just who the person is that seeks entry into their country. The passport, then, is really nothing more than an identification card indicating to the particular country that the bearer is a citizen of the United States. It is also a request from the traveler's country that the foreign country extend to its citizen the protection of its laws during the citizen's travel and sojourn in their country. So the passport, then, is an aid to travel. The issuance of a passport to a citizen permits the citizen to more fully enjoy his right to travel. The Government's refusal to issue a passport to an individual restricts and limits the citizen's right to travel, the effect of which is to deny to the citizen his constitutional and natural right of locomotion. It becomes apparent, then, that the Federal Government's right to limit or deny the full enjoyment of a constitutional and natural right is governed by the aforementioned general welfare of the people yardstick.

In my opinion, the promotion of international travel of U.S. citizens and the encouragement of our citizens to know and to understand all peoples throughout the world is in the individual and the public interest and conduces to a more amicable and understanding relationship between all peoples and their respective countries. This, of course, is a policy decision to be made by the Congress. It is certainly consonant with the prior congressional pronouncements relating to our country's international programs.

Travel by citizens abroad should be as free of governmental restraint as possible consistent with requirements of national security. The Government should facilitate such travel and should provide for the protection of citizens abroad by providing passports, by negotiating with other countries to minimize travel formalities, and by other appropriate means to implement this salutary principle.

In section 3 of my bill, H.R. 5455, there are certain findings and declarations made by the Congress. You will note that the Communist Party in the United States is characterized as not being a political party or a political philosophy as such, but it is defined as "an instrumentality of the world Communist conspiracy whose purpose is to overthrow the Government of the United States." It is further characterized as being under the direction, domination, and control of a foreign power whose aims are the overthrow of any legally constituted governments not Communist dominated.

A further finding is made by the Congress that all U.S. citizens who "knowingly and willfully participate in the world Communist conspiracy in effect repudiate their allegiance to the United States and transfer their allegiance to the foreign power in which is vested the direction and control of the world Communist conspiracy and the Communist Parties of the world." A final finding is also made by the Congress that the issuance of passports to U.S. citizens who support the world Communist conspiracy presents a "clear and present danger to the security of the United States."

In view of these findings, the provision is made that during any period when the United States is at war or during the existence of any national emergency proclaimed by the President, a passport shall not be issued to any U.S. citizen if such

PASSPORT LEGISLATION

citizen is a member of the Communist Party or is a member of any organization which is registered or as to which there is, in effect, a final order of the Subversive Activities Control Board requiring registration with the Attorney General of the United States as a Communist action, Communist front, or Communist-infiltrated organization, or has terminated such membership under such circumstances as to warrant the conclusion that such citizen continues to act in furtherance of the interest of the Communist conspiracy. Prohibition is extended to those who knowingly engage in activities which support the world Communist conspiracy under such circumstances as to warrant the conclusion that such citizen continues to act in furtherance of the interest of the world Communist conspiracy. These findings are consistent and in accord with the Internal Security Act of 1950. This act makes it unlawful for any member of the Communist conspiracy to make application for a passport or the renewal of a passport to be issued or renewed by or under the authority of the United States or to use or attempt to use any such passport.

It is the opinion shared by many that before the Congress can lawfully limit a citizen's right to travel because of his affiliation with the Communist movement, it is necessary that the aforementioned findings of fact be made as conditions precedent to any such restrictions. You will note further that these prohibitions will only be effective under the Passport Act of 1959, during a time when the United States is at war or during a period of national emergency proclaimed by the President. It is my opinion that if further restrictions are found to be necessary by the Congress that it is more appropriate that these restrictions be contained in the Internal Security Act of 1950 as is presently provided rather than encumber the Passport Act of 1959 which is designed to facilitate the travel of U.S. citizens abroad.

In my bill, H.R. 5455, the Passport Act of 1959, is proposed the stated policy of the Congress of the United States that the promotion of international travel of U.S. citizens and the encouragement of its citizens to know and understand all people throughout the world is in the individual and public interest and conduces to a more amicable and understanding relationship between all peoples in their respective countries. This policy dictates that travel by citizens abroad should be as free of governmental restraint as possible, consistent with the requirements of national security. In accordance with this overriding principle, in my opinion, passport facilities should only be denied in the following instances, to wit:

First. Where such travel would--

- (a) Further the world Communist conspiracy as provided in the bill;
- (b) Violate the laws of the United States or of any State or territory thereof;
- (c) Aid in the evasion of any order issued by any court of record of the United States or of any State or territory thereof;
- (d) Aid in the evasion of any information or indictment for a felony duly found by the United States or any State or territory thereof;
- (e) Be prejudicial to the national welfare, safety, or security; or
- (f) Permit such citizen to use a valid passport while there is outstanding any sum of money owed by such citizen to the Government of the United States for previous transportation back to the United States.

Section 5 defines the passport and section 5(b) contains a new concept in our passport laws. This provision provides that a passport issued under this act is nontransferable and becomes the sole property of the citizen to whom issued, but is valid only for the period for which issued. This provision is significant in that it is a break from the philosophy presently contained in the regulations expressing the Federal Government personal property concept. The present concept in my opinion is misleading. The right to travel belongs to the individual citizens subject, of course, to certain limitations as hereinbefore recited, but basically this right belongs to the citizen. A passport is an essential aid to travel abroad. In my opinion, the emphasis must be placed on the individual's right to exercise this freedom of locomotion. It is therefore a matter of emphasis. This new emphasis is based on what can we do at the Federal level to facilitate the individual's right to travel, rather than vesting a personal property interest in the individual citizen's passport in the Federal Government. This is important from the point of view of policy. The emphasis changes from the concept of a privilege granted by our Government to the free exercise of a constitutional right by the citizen.

My bill makes further provision for the issuance of regulation by the Secretary of State and significantly it provides for the establishment of the U.S. Passport Service. Our present Passport Office, in my opinion, is doing an outstanding job. The U.S. Passport Service is established under this act as a service to the

American citizen to facilitate the citizen's travel abroad and in aiding him to communicate with all people throughout the world.

There has been a great deal of discussion in the recent past relating to certain area restrictions imposed by the Secretary of State. Section 16 of my bill provides for restrictions of travel to, first, places where armed hostilities are in progress; second, countries with which the United States is at war; and third, countries to which the President finds that travel should be restricted in the national interest. It is important, however, that certain exceptions be provided for and subsection (b) of section 16 provides that the Secretary of State may make exceptions to general travel restrictions for individuals and for classes of persons including the classes of professional newsgatherers, missionaries, and doctors on medical missions.

Before general travel restrictions can be imposed, however, section 17 of my bill provides that travel abroad of any citizen shall not be restrained and passports shall not be limited in validity with respect to any place unless the President has made an appropriate declaration under subsection (a) of section 16. In each such case, the President shall report the reasons for such declaration to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate and such declaration shall be effective for a period of not more than 1 year unless such time is extended by law.

In accordance with the provisions of my bill, certain serious limitations are placed on the citizen's constitutional right to travel. When a determination has been made that a passport should not be issued to a citizen, it is absolutely essential that the Congress make certain that the review procedures provided will accord procedural due process to the passport applicant. In accordance with this belief, section 18(a) of my bill provides for the establishment of a Passport Review Board within the State Department consisting of five officers of the Department to be designated by the Secretary of State. Further provision is made that no person shall be eligible to serve on such Passport Review Board in any case under this section in which he shall have participated in investigative functions or in which he shall have participated in the original refusal to issue, renew, or extend such passport or in the original action of withdrawal, cancellation, revocation, limitation, or restriction of such passport.

The Passport Review Board shall establish its own rules of procedure which must be approved by the Secretary of State. Subsection (b) of section 18 requires that the rules accord the applicant or passport holder the right to appear personally, to be represented by counsel, and to offer oral or documentary evidence. Applicant or passport holder must receive a copy of the transcript proceedings and be permitted to cross-examine all of the witnesses against him and examine all other evidence which is made a part of the open record in the case. In accordance with the overall policy, the Board must insure, consistent with national security, that all evidence and witnesses relied upon are produced and made a part of the open record.

In the event of an adverse ruling by the Review Board, provision is made that the U.S. District Court for the District of Columbia, shall have jurisdiction to hear and determine any appeal from a final decision of the Passport Review Board.

These are the primary provisions contained in my bill, H.R. 5455, nominally called the Passport Act of 1959. In our society truth can be found in the full expression and enjoyment of the freedom of the individual. Free and unfettered travel will help the individual in his quest for truth. It should be the Government's position to encourage all of its citizens who are able to leave its borders and communicate with their world citizens abroad. It is this dynamic peoples to peoples approach that cuts through the restrictions of protocol and brings about an understanding that cannot be achieved from the executive directives of both sides of the waters. The Passport Department can be a real boon to this great peoples to peoples movement. Its fundamental purpose is service to the American citizen. The Department was not established to restrict this right to travel. On the contrary, it was established to facilitate the right to travel. When we think in these terms, many of the artificial rules and regulations and limitations proffered by some of our colleagues fall away and lose their alleged significance. It is with this great hope in mind of facilitating this worldwide movement of peoples that I have introduced H.R. 5455.

STATEMENT REGARDING H.R. 1919 WHICH PROVIDES DENIAL OF PASSPORTS TO MEMBERS AND FORMER MEMBERS OF THE COMMUNIST PARTY BY HON. CRAIG HOSMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, since the Supreme Court ruled about a year ago that the Secretary of State could not refuse a passport to a Communist, because Congress had never specifically given him the right to refuse, well over 1,100 persons, whom the State Department has reason to suspect, have applied for passports. The passports have been granted.

Unless Congress takes action, the State Department must continue issuing passports to known Communists traveling abroad in the service of the international Communist conspiracy. These people could take a course in Moscow on overthrowing the U.S. Government and go back there again the next year under the protection of their U.S. passports for a postgraduate course.

Activities of the international Communist movement are a clear, present, and continuing danger to the security of the United States, and travel by couriers and agents is a major and essential means by which the movement is promoted and directed.

It is an absurdity that the McCarran Act prevents foreign Communists from entering the United States, while the State Department is forced to ask foreign countries to facilitate the travel abroad of known American Communists.

The majority opinion of the Supreme Court made it clear that it was not settling the issue on constitutional grounds. It simply found that the Secretary of State did not have the statutory authority to withhold the passports. Soon after the Supreme Court's decision, the late Secretary of State John Foster Dulles stated in part:

"The international Communist movement seeks everywhere to thwart U.S. foreign policy. It seeks on every front to influence foreign governments and peoples against the United States and eventually by every means, including violence, to encircle the United States and subordinate us to its will. The issuance of U.S. passports to supporters of that movement facilitates their travel to and in foreign countries. It clothes them when abroad with all the dignity and protection that our Government affords. Surely our Government should be in a position to deny passports to such persons."

But the Secretary's plea was—and still is—unanswered. The result?

The State Department reports a flood of applications from persons with records of Communist affiliation or activities. Some of them had previously been denied passports, and many had never previously applied. Many the State Department knows a great deal about, and none of it is good. Others the Department wants to know more about, but it can no longer inquire, much less investigate, whether an applicant is a Communist Party member or how dangerous he may be.

The rights of the individual are not violated under my bill, H.R. 1919, because a person denied a passport can have a hearing plus a review of the turndown by a U.S. district court. It permits the Secretary of State to require passport applicants to make a non-Communist affidavit as a condition of being issued the passport.

I respectfully urge the committee to take action on this measure.

Chairman MORGAN. Our witness this morning is Hon. John V. Lindsay, a Member of Congress from the State of New York.

Mr. Lindsay, I see you have a statement. Will you please proceed, sir?

STATEMENT OF HON. JOHN V. LINDSAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. LINDSAY. Mr. Chairman, I am grateful for the opportunity of appearing before this distinguished committee. I share your concern, and that of the Department of State whose representatives have already testified, over the absence of legislation, consistent with the decisions of the Supreme Court in the *Kent*, *Briehl*, and *Dayton* cases, authorizing the Secretary of State to exercise some measure of discretion in the issuance of passports. I am aware, as we all are, that the matter of passports and their issuance is necessarily an aspect of

the conduct of foreign affairs, and in that sense, bears upon national and international security.

But in approaching the problem of devising legislation I start with the premise that we are dealing here with a constitutional right. I am in firm agreement with the opinion of the Supreme Court in the *Kent*, *Briehl*, and *Dayton* cases. While not deciding those cases on constitutional grounds, the Court nevertheless stated that the right to travel is part of the "liberty" of which a citizen cannot be deprived without due process of law of the fifth amendment. I agree wholeheartedly with that statement.

I believe also that the right to travel is conjoint with and part of the first amendment—freedom of speech and assembly. I believe it to be the duty of this committee to study the substance of the right to travel with great care, realizing that any measures restricting this right are certain to be tested in the courts sooner or later—probably sooner. And I am particularly disturbed by what I feel are constitutional inadequacies in the legislation indorsed by the Department of State to you.

What is the right to travel? In my book it is one of the most fundamental liberties that we have. The Supreme Court tells us that it is "part of the 'liberty' protected by the due process clause of the fifth amendment." The Solicitor General of the United States conceded as much in his argument before the Court in *Kent* and *Dayton*. But, as I stated at the outset, I would suggest also that it is a part of the first amendment. Of all the freedoms that we have, the one I should most hate to lose is freedom of speech. Speech is communication, and communication in this modern day is impossible without locomotion. Speech is meaningless unless thought of in the context of the physical and social aspects of human existence.

Constitutional sources strongly suggest that early Americans recognized a freedom to move beyond national frontiers. However uncertain its basis may have been, however unclear its limitations, the English recognized that freedom long before they crossed the Atlantic. The people of the Colonies, moreover, evidently took the freedom for granted; witness the constant movement between Colonies and to the west. That may explain why the freedom was not more clearly recognized in writing. The Declaration of Independence goes no further than to list as a grievance the restrictions which George the Third placed upon emigration.

The Articles of Confederation merely guaranteed free movement between different Colonies, though the Colonies, not yet joined in a "more perfect union," were more like foreign countries to each other than the United States are today. Perhaps the most direct documentary evidence is to be found in the Pennsylvania constitution of 1790 which declared "that emigration from the State shall not be prohibited."

These sources, taken together, and viewed in the light of the ninth amendment, warrant the assumption that omission of the words "right to travel" was not intended to eliminate the right. Nor is the omission inconsistent with a specific intention to include the right in free speech. The Constitution was designed to guide the United States for an indefinite period of time. It would have been impossible to enumerate the variety of ways in which free speech might be

abridged—and the framers recognized this in the generality of the first amendment's language.

The specific problem your committee must wrestle with, Mr. Chairman, is that of finding a constitutional way of preventing hard core, dedicated Communists from abusing the travel right by actively striving against our most supreme national interests.

Now, let me make it absolutely clear that we are not here talking about anyone who is under indictment for the commission of any crime, or is under restraining order of any kind by any court, or has been stripped of any right or liberty by due process of law. As to these, we all agree that the right to travel ought to be, and can constitutionally be, curtailed.

The nonindicted, non-court-restrained Communist presents a more difficult case. There may well be risks inherent in allowing a member of the Communist Party, or one identified as such by our intelligence units, free exit from our shores to travel abroad. But it is necessary to point out that this is true when Communists travel from Chicago to New York or from New York to the Bahamas, or from Dallas to Mexico, or from San Francisco to Buenos Aires or to any other South American country, none of which places requires a passport for exit or entry. It should be pointed out also that under the McCarran-Walter Act we are required to deport alien members of the Communist Party and we go to elaborate efforts to secure their removal after they have been traveling freely in this country for years.

Well and good enough. Yet under our passport procedures, until the Supreme Court decided otherwise, we have insisted that it is essential to the national security to keep citizen members of the party confined to our shores. The point is that there could possibly be something wrong with our reasoning; and when we are dealing with limitations on constitutional rights it is important that our reasoning be compelling and logical. You must consider whether the bills before you will in fact accomplish their purpose of confining trained subversives to these shores. You must remember, also, that the President has in the past stressed the importance of taking every reasonable step that will facilitate international travel and exchange, e.g., the abolition of the requirement of fingerprinting for transients through and temporary visitors to this country.

I do not differ too widely in substance from the position taken by the administration as presented by the State Department through its spokesman, Mr. Hanes, in his testimony here. I shall come to the differences shortly and although they are seemingly small, they are important ones. I do differ widely in emphasis. I would emphasize the obligation of the Department of State—for that matter, of every executive department—to scrupulously avoid to the greatest extent possible any intrusion on the precious rights of American citizens. The right to travel, although it has been around a long while, is just beginning to be articulated. We must be careful not to let a cavalier approach lead us to legislative decisions which the courts may undo, and quite properly so.

I agree with the State Department that it is indeed fundamental that the liberty guaranteed by the Constitution is not absolute. "Civil liberties," says the Supreme Court, "imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."

Freedom to travel, like other liberties, is subject to reasonable regulation and control in the interests of the public welfare. I am not sure that it is possible to draw up absolutely fixed rules which will in advance strike a proper balance which will meet the exigencies of every case, protect the public interest, and yet stay within constitutional limitations.

Circumstances and the times vary and "due process of law has never been a term of fixed and invariable content." But let's make sure we don't "throw out the baby with the bath." I should like therefore to restate what I believe to be the guideposts which should guide the Congress in its consideration of this subject:

First, the right to travel—to communicate—is a constitutionally protected right which may not be abrogated by the State except under the general war power which normally may be invoked only in time of extreme emergency, usually involving armed conflict between nations. The right is a concomitant of, and conjoint with, the first amendment of the Constitution. A denial of a passport, therefore, may result in violations of both the fifth and first amendments.

Second, neither the right of the citizen to have issued, nor the right of the Secretary of State to deny issuance of, a passport is an absolute right.

Third, a general standard under which the Secretary of State is authorized to deny the issuance of a passport whenever he finds that its issuance would be contrary to the national welfare, safety, or security, or otherwise be prejudicial to the interests of the United States, is too indefinite a standard when applied to a right as firmly grounded among our basic liberties as is freedom of speech and assembly. In the past we have too often seen examples of executive arbitrariness under the umbrella of "the national security" and "the conduct of foreign relations."

Fourth, a refusal to issue a passport may not rest upon confidential undisclosed information, under a blanket, unlimited authority to use the same. Such a refusal would, in all probability, be a denial of due process of law under the fifth amendment. The authority to use confidential information in the administrative process, under imprecise standards, coupled with the power to delegate the authority to subordinates, and without full judicial review, can result in a breeding ground of arbitrariness in the course of which innocent people may, and undoubtedly will, suffer.

You will note that I have spoken here of blanket, unlimited authority to use confidential information. There may be room for an exception to cover the hard core Communist case, under which the Secretary of State or the Under Secretary personally will certify, first, that disclosure will expose a "double" or "buried" agent of tested and known reliability; second, that such exposure will be prejudicial to the national interests; and, third, that the case may not be decided without resort to such evidence. But even then, full access to the evidence in question should be given upon judicial review to the court, under seal, for examination by the court in camera.

Thus the two important points of difference between the Department of State's views and mine are:

(1) I would permit confidential information to be used only upon certification at the highest level of its special necessity, and

(2) I would require that the whole of the confidential information be laid under seal before the reviewing judge in chambers. In my judgment, anything less might violate the due process requirement of the fifth amendment.

Turning then to the bills before this committee, to the extent that time has permitted me to review them, I believe that H.R. 7006, which the State Department has endorsed, is lacking in the necessary procedural safeguards of a constitutional right. Since H.R. 2468 contains no review provision at all, it seems deficient in this respect as well as in the others enumerated by the Department. Nor does H.R. 5455 provide such safeguards in my judgment.

I find that H.R. 55 in its present form contains the words "on the record" at line 11, page 3, which are ambiguous. I understand from Mr. Eanes' statement that there is legislative history behind these words and if they can fairly be deemed to mean "on the record, open and closed," that the bill contains, at least in part, the standards I should like to see applied.

The best approach to the procedural problem of the bills presently before you, in my opinion, is contained in title III of H.R. 8329. In its requirement in section 306(b) that the Secretary of State himself make the final administrative determination upholding a refusal to issue, or a revocation of, a passport, it goes far toward providing for due caution in the evaluation of confidential information. And its section 307 provides what no other House bill I have examined does: the kind of judicial review necessary, in my judgment, to meet the constitutional test of due process.

I have not in this discussion tried to spell out an entire code to govern the issuance of passports or to draft legislation. My purpose here has been only to state my views on some of the fundamentals, and I would hope that consideration of this matter in the Congress would be guided by those fundamentals. Neither have I touched upon the whole subject of area restrictions, except indirectly. Here I would recommend the "Report of the Special Committee To Study Passport Procedures of the Association of the Bar of the City of New York," an excellent report, prepared by a distinguished committee of lawyers, and I am sure that every member of this committee has read it. Its conclusion on the subject of area restraints is as follows:

Travel abroad by all U.S. citizens may be prohibited in areas where the Secretary of State determines that such prohibitions should be imposed in the national interest, but only in situations of exceptional gravity. The imposition of area restrictions should be accompanied by a statement by the Secretary of State setting forth the reasons therefor. Exceptions to general area prohibitions, permitting travel by particular individuals or groups, may be made by the Secretary of State in his discretion. * * *

In closing, I should like to make reference to a document of great importance, which is too seldom invoked. It is the Universal Declaration of Human Rights which this year celebrated its 10th anniversary. Article 13 of the declaration reads as follows:

ARTICLE 13. (1) Everyone has the right to freedom of movement and residence within the borders of each State. (2) Everyone has the right to leave any country, including his own, and to return to his country.

The United States, along with the other member nations, has pledged itself to achieve, in cooperation with the United Nations, the promotion of universal respect and observance of the human rights

and fundamental freedoms set forth in the declaration. Let us in the United States be faithful to our pledge.

Chairman MORGAN. Thank you, Mr. Lindsay, for a very fine statement.

Mr. Lindsay, the usual procedure here in this committee is to operate under the 5-minute rule and with your permission each member will have 5 minutes for questions.

Mr. Lindsay, did I understand you to say that you did favor H.R. 55 in substance, with the words "on the record" included?

Mr. LINDSAY. The procedural aspects of H.R. 55 to me make sense. If "on the record" means a review—judicial review by the court, I would certainly view with favor an amendment to that which would at least give the Government the right to ask that confidential information, if it had been used in accordance with the procedures that I outlined, which are restrictive, be examined by the court in camera.

In other words, "on the record" is ambiguous. It can either mean on the record of the trial itself, or not. Now, as to the rest of H.R. 55, I am sure, Mr. Chairman, you realize, or gathered the impression from my statement, that I would prefer a new opening to H.R. 55 which would outline what is to me the most important approach to this thing, namely, a reemphasis of the importance of safeguarding the right to travel. We should not begin right in with what I regard to be the less important aspects of the matter. To me, if we are going to have legislation and if it is to be tested in the courts, why not do what we can to get it sustained in the courts? One thing we can do is to reaffirm the importance of the right to travel.

For example, in H.R. 55 you have some very broad stuff here. Apparently the Secretary of State may deny passport to any member who has been a member of the Communist Party at any time in the past. Now, I question whether that is desirable.

Chairman MORGAN. Thank you, Mr. Lindsay.

Mr. Fulton.

Mr. FULTON. I want to compliment Mr. Lindsay and because I am a personal friend I don't want to seem too enthusiastic, but I think you hit a very basic problem of rights and that we should be very careful about the kind of legislation that we are enacting, that we do not trespass upon our basic American liberties. The call for strong and quick action sometimes may be a call to trample some of the things that we have had as basic constitutional rights.

I do want to compliment Congressman Lindsay on an excellent statement and one of the best I have seen submitted to this committee.

The question comes up under the Smith Act, whether we can go further than that act and have an administrative action by the Secretary of State barring a passport based upon mere future intention, as distinguished from actions. We must remember that when the Secretary of State is acting on the issuance of a passport, the person applying to go abroad is a citizen of the United States in good standing and, secondly, has committed no act and, thirdly, has only an intention of future actions abroad that the Department or other Government agencies are guessing at, that he is going abroad to be an activist against the security interests of the United States.

As a matter of fact, we have no evidence of it because if the U.S. Government did, we would then already have an act and be able to take the individual into the criminal courts of the United States for action.

The question then comes up, do you think it is better to have the action of a denial of the right to travel by the U.S. Government refusing the U.S. citizen his basic right of passport authorization, initially, or would you think that it is best that we examine that citizen upon his return to this country and find what his activities have been abroad? This examination could be under oath and it would not be in the nature of denying him reentry, but it would be a conditional reentry. The returning U.S. citizen then is examined so that he must either state his activities abroad under oath or plead the fifth amendment, which discloses him.

Now, my great concern has been that I too believe that the U.S. Supreme Court will bar action of an administrative nature based upon pure undisclosed intention or thought unaccompanied by an act and, secondly, that it is in the future that we in Government are trying to judge, before a passport is authorized for the U.S. citizen's future trip abroad.

Would you comment on that, please?

Mr. LINDSAY. Well, if your question is an "either/or" proposition, which would I prefer, the first hypothesis you presented or the second, I would clearly prefer the second.

Mr. FULTON. That is my own feeling.

Mr. LINDSAY. I say that for the simple reason that you are getting into such extremely dangerous ground when you authorize the Secretary of State to issue what amounts to blanket denials of the passport without more than the simple allegation that applicant is a Communist.

I think that was perhaps one of the reasons that led this distinguished committee, the authors of "Freedom To Travel" published by the Association of the Bar of the City of New York, to come to the conclusion that the standards must necessarily be quite narrow.

You will all see that their proposed standards have to be quite narrowly drawn. In sum, they are:

- (1) Transmitting without proper authority security information of the United States;
- (2) Inciting hostilities or conflicts which might involve the United States; or
- (3) Inciting attacks by force upon the United States or attempts to overthrow its Government by force and violence.

The report goes on to say:

Travel should not be restrained and passports should not be denied solely on the basis of membership in any organization, even the Communist Party.

Now, this is your question. No acts, no nothing. Just membership.

Now, this committee, gentlemen, is composed of a group of careful, conservative lawyers who would not have made a suggestion like this unless in the months and months they labored over this report, they had thought it through very carefully.

Mr. FULTON. We must distinguish, I believe, somebody who has a mere intention and who is a risk abroad because of his previous unpendable ideas and thoughts. And that group would include a young person who is recruited for one of these youth festivals, so-called, behind the Iron Curtain. That is a different type of person from the one that I believe has committed an act; for example, in your own good city of New York where they have been recruiting young men to go to the Caribbean area for a revolutionary purpose.

In that case these people are activists within this country, committing acts, and a conspiracy so there are both acts and intent upon the citizen going abroad, which is a different kind of a case to me.

The case that we are trying to cover in this passport legislation is the preventive case. So that the question comes, would you agree with me that we can certainly, by our own criminal prosecutions, which I believe the Attorney General should be proceeding on now, prevent the recruitment and such type actions within this country in preparation for antagonistic actions abroad that would endanger either our U.S. security or the security of a friendly country? We must distinguish that case from the ones where there is simply the intent of an undependable person, undisclosed and unaccounted upon at the time of the proposed denial of the passport application.

Mr. LINDSAY. You clearly do have to make a distinction, Mr. Fulton, I think.

Mr. FULTON. That is all.

May I compliment you again. I have been very stimulated by your statement.

Chairman MORGAN. Mr. Burleson.

Mr. BURLESON. No questions.

Chairman MORGAN. Mr. Bentley.

Mr. BENTLEY. I want to compliment you on the time you have put upon your very excellent speech.

The committee, as you know, has accepted an amendment to my bill, H.R. 7006, has actually suggested an amendment, which would provide that all evidence to be used in the administrative finding with respect to a passport be laid before the judicial review body in camera for the determination of that reviewing body to decide whether the refusal or other action of the Department was based upon sufficient information.

I would assume with the inclusion of that amendment that would make H.R. 7006 more acceptable to you.

Mr. LINDSAY. It would definitely, Mr. Bentley.

Mr. BENTLEY. I would refer to your statement on page 3 in which you say the denial of a passport may result in violations of both the fifth and first amendments. Do I understand the tenor of your remarks to indicate your belief that the possession of a passport is a right, or conversely, is a privilege?

Mr. LINDSAY. It is a right as long as it remains an exit permit, which in this present day and age it is.

Mr. BENTLEY. Well, I wonder about that. I know you have traveled abroad recently as many of us have, and it is my recollection that a person can depart from the United States without the possession of a passport. Is that correct?

Mr. LINDSAY. I would put it this way: If the executive branch of the Government came to the conclusion that it did not want to permit a citizen of the United States to leave the country and it could bring a case in the courts on the grounds that the citizen did not possess a passport, and if he claimed the passport was an exit permit, I don't know how the case would come out. It would probably be won by the citizen, but I don't think it is clear as a matter of law.

Mr. BENTLEY. Let me read a statement for your information, furnished us by the Department of State following our hearings of last Wednesday in which I asked Mr. Hanes to discuss the State Department's belief that the possession of a passport is a privilege.

He submitted this information for the record, two short paragraphs which I will read, and ask you to comment on:

The obtaining of a passport is a privilege. Section 215(b) of the Immigration and Naturalization Act of 1952 has made it unlawful, during the existence of a state of war, or national emergency proclaimed by the President, and upon Presidential proclamation of the necessity for restrictions upon exit and entry, for a citizen to depart from or enter, or attempt to depart from or enter, the United States unless he holds a valid passport. Thus, the Congress has in effect given to the President and the Secretary of State the power to control the right of the citizen to exit from the United States.

The effect of this act of Congress, when coupled with the Presidential proclamation, has been to alter the traditional character of the U.S. passport. A passport is no longer merely an international document of identification. It is in addition an exit permit, the possession of which is required before the right to depart may be exercised. Criminal penalties are provided by section 1185 to punish violation of these limitations upon the constitutionally protected right of exit. Under these circumstances, the privileged character of the document is subordinated. Should the present emergency be terminated, should restrictions on departure and entry be no longer required, or should the statute be changed to require a separate exit permit instead of a passport as the necessary documentation to leave the country, the basic privileged character of the passport would again become paramount.

Mr. LINDSAY. I have utmost respect for Mr. Hanes, as I did for his predecessor.

Apparently I agree with him and he agrees with me on the present-day nature of the passport. It is considered an exit permit. But his opening statement there preceding this statement that the passport is an exit permit, to this effect that it is also a privilege, that is a complete and total non sequitur. One doesn't follow the other at all.

I would refer the Department of State to the U.S. Constitution.

Mr. BENTLEY. You regard the possession of the passport then as a constitutional right.

Mr. LINDSAY. I certainly do. As long as it is an exit permit.

Now, if the passport means nothing more than just a piece of paper which might in some undefined way assist you in your travels abroad, make life a little easier for you, you have a slightly different problem. It is still a problem because you have got all sorts of questions there of equal treatment under the law in connection with its issuance. But as long as it is an exit permit, in my judgment it is unquestionably a constitutionally protected right and not a privilege to be granted or not granted at the will of the Executive.

Mr. BENTLEY. Mr. Chairman, I imagine my time has expired. I will come back.

Thank you, Mr. Lindsay.

Chairman MORGAN. Mrs. Kelly.

Mrs. KELLY. Thank you, Mr. Chairman.

Mr. Lindsay, it is always nice to welcome a colleague from New York before our committee and to hear you praised for the work you do. After all, we are not all members of a Tuesday to Thursday club.

May I request you look at H.R. 55, section 8. You are in agreement with this, if "on the record" means the examination by a Federal court judge.

Mr. LINDSAY. If "on the record" means whatever has been examined by the hearing officer is equally available to the court on review, then that to me means "on the record."

Mrs. KELLY. That could possibly be straightened out in the report.

Mr. LINDSAY. If "on the record" also means it shall be made part of the court's public record, then it may require some clarification.

Mrs. KELLY. Mr. Farbstein of New York is the one who wrote that particular section and that was his thinking, so I was very happy to know that you supported that particular section.

Now, I am a little bit confused over your determination of "right to travel." You say it is an exit permit. What about reentry?

Mr. LINDSAY. Well, I would not consider it a reentry permit to the United States although it is hard to be flat about that, one way or the other.

It used to be—in England it used to be that the passport was an exit permit and then through a period of time the passport no longer was an exit permit; it was a travel document and it was not tied in with the right of exit from a country. It has really been only in modern times in this country that it has reverted back to what it was originally in England, an exit permit.

Whether it is a reentry permit is a tough question. In law, I would not so regard it, but reasonable men could differ on that.

Mrs. KELLY. If you consider this the right of an American citizen and want to protect his right to travel, you just can't send him out with an exit permit without his right to return.

Mr. LINDSAY. He of course has a right of reentry, but the question whether this little thing called a passport is the thing that establishes that in law is another question. It may be evidentiary, I don't know.

Mrs. KELLY. How would we establish it?

Mr. LINDSAY. He is an American citizen and he has the right to return to the country, whether he has nothing or whether he has something. I don't care what he has.

Mrs. KELLY. Do I understand further that you object to the denial of a passport to anyone who has been proven a member of the Communist Party from way back? You don't want a date set on the time he was a member of the party? You do not believe it should be denied to him on that account, is that right?

Mr. LINDSAY. No. What I said was, in raising queries about H.R. 55, be on guard against a broad authorization to withhold a passport to a person because 50 years ago he was a member of the Communist Party. Look out for language like that because it may not and probably will not stand up in the courts, and there goes your whole statute.

Mrs. KELLY. You go back 50 years. What about the thirties or forties? In recent law they are more or less considering 1948 on.

Would you only review those?

Mr. LINDSAY. Now, you are getting closer to a reasonable position. The point that I am attempting to make here is, if you want legislation, let's make it good legislation and don't court disaster.

Mr. SELDEN. If you will note, Mr. Lindsay, that is in H.R. 55.

Mrs. KELLY. That is what I was going to bring out.

Mr. LINDSAY. Yes, I see it in section 7. It is in section 7, H.R. 55.

Mr. SELDEN. It is in section 6 also.

Mr. LINDSAY. No, it is in the disjunctive, not the conjunctive.

The Secretary of State is authorized to deny a passport to any person who is a member or former member of * * * the Communist Party or * * *.

That puts it back to the man who was a member of the Communist Party up to 80 years ago.

Mrs. KELLY. You think that it should be determined as of 1948 on.
Mr. LINDSAY. It would be preferable.

I again think that because of the very sensitive nature of this whole subject, insofar as its future is concerned, traveling through the courts as it will, that the committee might be smarter to adopt the standards for the refusal of the issuance of passports which have been suggested by the committee of the Association of the Bar of the City of New York.

Mrs. KELLY. You are not in agreement with those standards?

Mr. LINDSAY. No, I didn't say that, Mrs. Kelly.

Mrs. KELLY. Well, you said, "They are very narrow."

Mr. LINDSAY. Yes, they are narrow. They make certain that you don't have such a broad standard that it will be struck down by the courts. Their standards are, insofar as individual restraints are concerned:

(1) transmitting without proper authority, security information of the United States;

(2) inciting hostilities or conflicts which might involve the United States; or

(3) inciting attacks by force upon the United States or attempts to overthrow its Government by force or violence.

This, in substance, is in the Hays bill and this was attacked by the State Department, but my point is that you might well consider using those standards and then see what kind of difficulty the Government of the United States has in protecting its security.

If the future shows that we are still in trouble, then tighten it up some more.

Mrs. KELLY. Could I ask one more question?

Mr. BURLERSON (presiding). Your time is up, but I am sure the others will agree for you to ask one other question.

Mrs. KELLY. What the American citizen does after he has gone abroad will be a determining factor as far as you are concerned, is that right? At that point we can prove that he is attempting to overthrow the Government and at that point something should be done. Is that correct?

Mr. LINDSAY. Yes. That is always determining. It is always evidentiary, but bear in mind you must draft language in which you fit evidence. Your basic standards in your language have to survive the courts. The courts will apply constitutional tests.

Mrs. KELLY. Your exit permit is a privilege and a right, but if he tries to do something abroad, how and on what grounds can we deny reentry into the United States?

Mr. LINDSAY. I think if you find and the evidence shows that Mr. X has conducted himself abroad in a manner hostile to the best interests of the United States, which is pointedly directed at subversion of the United States, or any other allied field, that your standards in H.R. 55, if that standard should survive, would be broad enough to cover it.

By the same token, the standards suggested by the New York committee would be broad enough to cover such a case. But why run the risk of trying to fit that evidence under such a broad umbrella that you strike down the whole thing again?

I don't know if you understand my answer.

Mrs. KELLY. I do.

Mr. BURLISON (presiding). Mrs. Church.

Mrs. CHURCH. Thank you, Mr. Chairman.

Mr. Lindsay, I find your statement very stimulating and thought provocative. I think that it would take a skilled lawyer to argue with you.

Have you tried, yourself, to write a bill? I know that your statement suggests certain provisions as to what you would or would not include, but have you attempted at all to write a bill?

Mr. LINDSAY. I have not attempted to draft specific language. If you give me 2 days, I would be happy to try.

Mrs. CHURCH. It would be valuable to me and to the committee if Mr. Lindsay would draft language which he thinks would stand a constitutional test.

Mr. LINDSAY. I will be happy to try.

Mrs. CHURCH. Thank you for coming.

(The language submitted by Mr. Lindsay is as follows; see also H.R. 8930:)

[H.R.—, 86th Cong., 1st sess.]

A BILL To provide standards for the denial of passports, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

RECOGNITION OF RIGHT TO TRAVEL

SECTION 1. The Congress recognizes that the right to travel abroad is a fundamental right of every United States citizen, based upon and protected by the United States Constitution; and that it is a duty of the United States Government scrupulously to avoid placing on the exercise of such right restrictions not warranted by the highest considerations of public policy and national interest.

AUTHORITY OF SECRETARY OF STATE

SEC. 2. The Congress finds that the national security of the United States may be endangered as the result of certain activities which may be and have been engaged in by United States citizens while abroad, and hereby authorizes the Secretary of State to deny a passport, or to revoke a passport previously issued, upon certain grounds, and pursuant to certain procedures, set forth herein. The Secretary of State is authorized to prescribe regulations consistent with this Act pertaining to the denial or revocation of passports.

PERSONS NOT ENTITLED TO PASSPORTS

SEC. 3. (a) The Secretary of State may deny a passport, or revoke any passport previously issued, to any person as to whom he finds reasonable grounds to believe that his activities abroad would endanger the national security by—

(1) transmitting, without proper authority, security information of the United States;

(2) inciting hostilities or conflicts which might involve the United States;

or

(3) inciting attacks by force upon the United States or attempts to overthrow its Government by force and violence.

(b) The Secretary of State shall not deny a passport to any person pursuant to subsection (a) solely on the basis of membership in any organization, association with any individual or group, adherence to unpopular views, or criticisms of the United States or its domestic or foreign policies.

(c) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may direct the issuance of a passport in any case if he deems such action advisable in the national interest. A passport issued pursuant to this subsection which would not otherwise be issued under subsection (a) of this section may be limited with respect to duration and the areas for which it is valid.

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PASSPORT LEGISLATION
CREATION AND JURISDICTION OF BOARD OF PASSPORT APPEALS

SEC. 4. (a) There shall be established within the Department of State the Board of Passport Appeals (hereafter referred to as the "Board"), which shall consist of the Legal Adviser of the Secretary of State, or his designee, and two other officers of the Department of State designated by the Secretary of State. None of such officers shall have participated in any manner in the initial adverse determinations concerning the passport in question.

(b) The Board shall have jurisdiction in all cases wherein a hearing is requested in writing within sixty days after notification of the denial or revocation of a passport pursuant to Sec. 3 of this Act. The Board shall hold a hearing within thirty days after the receipt of the request unless such time limit is extended at the request of the party requesting the hearing. Upon request, the Board shall grant a priority to a hearing requested in any case involving revocation of a passport.

COUNSEL FOR THE DEPARTMENT

SEC. 5. The Secretary of State shall designate from time to time in the Department of State an officer who shall serve as Counsel for the Department in connection with hearings held before the Board. The Counsel shall be responsible to the Secretary of State, and shall have the following duties in addition to those otherwise delegated to him.

- (1) To present the Government's case before the Board;
- (2) To examine Government witnesses and cross-examine witnesses presented by the applicant in proceedings before the Board;
- (3) To take all other necessary actions in connection with the presentation of the Government's case in hearings before the Board.

The function of the Counsel with respect to the Board and its functions shall be limited strictly to matters covered by paragraphs (1) through (3) of this section, and shall in no case include the furnishing of ex parte advice or instructions to the Board, or in any other way participating in the Board's decision in any case.

RIGHTS OF THE APPLICANT

SEC. 6. In all hearings before the Board, the applicant shall have the following rights:

- (1) To appear in person and to be represented by counsel;
- (2) To testify in his own behalf, present witnesses, and offer documentary and other evidence;
- (3) To cross-examine witnesses appearing against him at any hearing at which he or his counsel is present and to examine all other evidence which is made a part of the open record;
- (4) Within ten days after completion of the hearing, examine a copy of the transcript of the proceedings, which shall include all documentary and testimony evidence which is a part of the open record, and, upon request, to be furnished a copy of the transcript at the expense of the United States.

EVIDENCE WITHHELD FROM APPLICANT

SEC. 7. The Board may consider oral or documentary evidence relevant to the issue to be determined in any hearing without making such evidence part of the open record only if the Secretary of State or the Under Secretary of State, personally, certifies to the Board that:

- (1) Admission of such evidence into the open record would expose a source of information of tested and known reliability, or investigative techniques;
- (2) Exposure of such source or techniques would have a substantially adverse effect upon the national security; and
- (3) In his judgment such evidence constitutes the only evidence on the basis of which a passport may be denied or revoked.

The Board shall furnish the applicant a résumé of such evidence, and shall certify that it is a fair résumé. The Board shall take into consideration the individual's inability to challenge information of which he has not been advised in full or in detail and to attack the credibility of evidence which has not been disclosed.

MATERIALITY OF COMMUNIST ACTIVITIES

SEC. 8. In determining whether a person is within the categories described in Section 3(a) the Board shall consider as material, among other matters, whether the applicant is a person who, whether or not a member or former member of, or

affiliated with, the Communist Party, knowingly engages or has engaged, within ten years, prior to filing the passport application, in activities in furtherance of the international Communist movement.

HEARINGS HELD IN PRIVATE

SEC. 9. All hearings before the Board shall be closed to the public, unless the applicant requests a public hearing, in which case the hearing shall be public.

PROCEDURE OF BOARD AFTER HEARING

SEC. 10. (a) If, after hearing, the Board determines that a passport which has been denied should have been granted, or that a passport which has been revoked should not have been revoked, the Board shall issue an order granting the passport, or cancelling the revocation, as the case may be.

(b) If, after hearing, the Board determines that a passport which has been denied was properly denied, or that a passport which has been revoked was properly revoked, the Board shall make written findings, conclusions, and recommendations, which shall be transmitted with the entire record to the Secretary of State who shall make the final administrative determination. A copy of the recommendations and of such findings and conclusions as are based upon the open record shall be furnished the individual, who may within twenty days following the receipt thereof submit to the Secretary written objections thereto. The Secretary shall base his determination upon the entire record submitted to him by the Board, including all findings and conclusions, and any objections submitted by the individual. In appropriate cases, the Secretary may remand a case to the Board for further proceedings. In the event he takes action adverse to the individual, the Secretary shall make appropriate written findings, certifications, and conclusions, and furnish a copy thereof to the applicant.

JUDICIAL REVIEW

SEC. 11. (a) A denial of a passport pursuant to this Act by the Secretary of State, and the approval of the Secretary of State of a revocation of a passport pursuant to this Act, shall be subject to judicial review in the district courts of the United States.

(b) In proceedings for review in the district courts pursuant to this section, the Secretary of State shall transmit to the court the entire record, both open and closed, upon which his final determination was made; provided, that the closed record, if any, shall be delivered to the court under seal.

(c) The court shall determine whether or not the decision of the Secretary of State denying the passport, or approving the revocation thereof, is supported by substantial evidence in the open and closed record as a whole, and shall then enter such order as may be just. The court shall not disclose any part of the closed record to the applicant or his attorney.

Mr. BURLISON (presiding). Mr. Selden.

Mr. SELDEN. We are happy to have had you here, Mr. Lindsay. Your comments have been most interesting and stimulating.

You referred to H.R. 55 and the words "on the record." The State Department only recently suggested in the amendment that I showed you earlier that those three words be stricken and in lieu of them that this sentence be added:

In any such proceedings the court shall have the power to determine whether the decision of the Secretary of State under section 6 is supported by substantial evidence in the record presented. The court, if dissatisfied with the summary of any evidence not disclosed to the applicant, may in its discretion inspect such evidence in camera.

That proposed amendment seems to tie in somewhat with your suggestion in paragraph 3, page 4 of your statement. Do you think such language would strengthen H.R. 55 or make it more acceptable in line with your suggestion, or do you think that the words "on the record" left in the bill would be more satisfactory?

Mr. LINDSAY. I think the suggested language would clarify it. There would be ambiguity otherwise. I think it would be helpful to do it.

Of course, I would put in my drafted legislation a requirement that the use of confidential information be authorized, before it is used, only by either the Secretary or the Under Secretary, in writing.

Now, the reason for that is to make it tougher to resort to it. With your permission, Mr. Chairman, I would just like to describe what I mean by the importance of this particular aspect of it and I hope the committee will examine it.

Some time ago when I was with the Department of Justice the question was raised as to the constitutionality of the use of confidential undisclosed information in deciding whether or not an alien who was otherwise deportable and found to be deportable was entitled to suspension of deportation.

Now you all know what suspension of deportation is. It is a device used for a deportable alien who has been a good person for a specified period of time and has met certain standards of hardship. The Attorney General may, in his discretion say, "Because of this hardship, and because his conduct has been exemplary, we will grant him suspension."

Now, in order to determine whether such relief will be granted you go through a regular hearing. The difficulty was that the regulations authorized the use of confidential information in deciding whether or not an alien should be entitled to suspension and, lo and behold, an alien who had an exemplary record, even though the event which made him deportable happened a long period of time ago, was denied suspension on the grounds of confidential information. It was the hearing officer who decided it this way.

The case traveled through the courts and it went up to the Supreme Court of the United States. The question was whether or not confidential information—the use of it in this case—was constitutional.

The case was won in a 5 to 4 decision. That is to say, the Government won the case 5 to 4 with 4 separate dissents. The only reason the Government won the case was because the Government was able to argue the case was comparable to a criminal case where the defendant had been found guilty and he then comes to the judge and says, "Your Honor, please give me a suspended sentence. Put me on probation."

Under those circumstances, the court is always entitled to look at the confidential report of the probation officer. And the defendant is not entitled to look at it.

So the judge may decide whether or not to put the man in prison or put him back on probation with his family on the basis of undisclosed information.

So it was argued to the Supreme Court of the United States, what is the difference, this man is deportable and he is asking for mercy—discretionary relief, and under those circumstances, 5 to 4 only, the use of confidential information was sustained.

At that point the Department of Justice, through the courageous and intelligent approach of its Commissioner, General Swing, said "Why do we have to do this in so many cases? I am not so sure it is necessary to decide so many cases on this type of evidence. If a comparable case comes up again, we may lose it."

And he is quite right; they might.

So the regulations were redrafted to require that the use of confidential information in any suspension case could be resorted to only on the personal certification of the Commissioner or the Assistant Commissioner, because the Commissioner well knew that the boys down the line, dealing with FBI memos and that kind of thing, would take often the lazy way out in coming to a decision on a case and say, "Well, this is confidential; we will refuse suspension. We won't tell him why. We won't show him this stuff."

Since then—and this was 1956 that this occurred, or 1957—since then it has not been found necessary to decide one single case on the basis of confidential information.

Mr. FASCELL. Just deny them all.

Mr. LINDSAY. No, because you have to deny them after a hearing on the record which is reviewable in the courts.

You see, if you let it go down the line too far and give people broad authority to use it without review by responsible administrators at the very top, and responsible judges, it can get out of hand.

Mr. SELDEN. I am sure my time has expired.

Chairman MORGAN. Mr. O'Hara.

Mr. O'HARA. Mr. Lindsay, I have enjoyed your presentment. I think perhaps on basic outlines you and I agree. I do find, however, some inconsistency in your statement and if you will bear with me just briefly—you conclude your statement by quoting article 13 of the "Universal Declaration of Human Rights."

Part of it says, "Everyone has the right to leave any country, including his own, and to return to his country."

You say everyone. Then you are willing to concede on page 2 that while you believe that no one should be denied a passport because of rumor or because of hidden information, or information not made public, and not reviewed by the court, but you are willing to concede—and the gentleman from Michigan, I believe, asked you if that would make the administration bill unpalatable to you and you said it would—that such secret information can be used, but a court—and that means one judge in chambers, in camera, he can look at this. Nobody else knows what is in there, no other member of the court knows what is there, just the one judge in chambers.

Mr. LINDSAY. And the court of appeals.

Mr. O'HARA. What gets to the court of appeals?

Mr. LINDSAY. The confidential record under seal in those cases.

Mr. O'HARA. And you think that would be some check?

Mr. LINDSAY. May I say this procedure is the so-called Second Circuit rule that was adopted by the U.S. Court of Appeals for the Second Circuit in Jencks-type cases. If some of the other district courts had insisted upon the application of the second circuit rule in the Jencks-type cases they were dealing with (which was inspection of confidential information in order to use it as the basis of cross-examination), the Jencks case might have been decided the other way.

Mr. O'HARA. Now, Mr. Lindsay, you and I and all of us who have practiced in the courts know that the judges are all honorable men and are just men but they all have their own slants.

For instance, if I were representing a labor union, I would prefer a judge whose background is not too closely allied with management or vice versa. As defense counsel, I would prefer a judge who had been

a defense counsel instead of a prosecutor. Both are honest and sincere, but their backgrounds are apt to be reflected in their judicial attitudes.

When you propose the right of an American citizen be taken from him on evidence not disclosed to one judge in chambers, in camera, not given to the public, aren't you opening the door for abuses? It seems to me dangerous to put too much power in the hands of any individual whether he is Secretary of State or a judge on the bench.

Mr. LINDSAY. Yes, you may be, and that is why I say let's surround the use of this information with every possible safeguard. This is one of them. Personal certification by the Secretary or the Under Secretary is another one; tightly drawn standards is a third one.

Undoubtedly the use of this is an invasion of personal rights but as I attempted to point out, times and circumstances dictate that invasions of personal liberties or restrictions on personal liberties are sometimes necessary in an organized society.

Mr. O'HARA. Now, you have pointed out there is no disagreement, that when one is adjudged guilty of an offense by a court he is not allowed to have a passport. Here is a man engaged in a conspiracy against our Government. Have we not now criminal law under which we can proceed?

Mr. LINDSAY. We do.

Mr. O'HARA. And, of course, we cannot convict a man of a crime on rumor, or on some evidence not disclosed.

Mr. LINDSAY. That is right.

Mr. O'HARA. And if some evidence is presented against him in an open court, he has a right to show perhaps the prejudice and the interest behind that evidence.

Mr. LINDSAY. That is correct.

Mr. O'HARA. All right. Now, when do we go further than that? When someone suspects a man has been active in conspiracy against our Government he is justified in taking to the proper Federal officials what evidence he has, and if the evidence suffices the suspect can be indicted and his conviction would bar him at a later date from the right to a passport. Yet that is not done. Can you then try the suspect in a hearing for a passport and convict him on suspicion or on a report that comes from an undisclosed source and is not open to scrutiny?

Mr. LINDSAY. Yes. The proposition you are posing is age-old. The answer, of course, that has been laid down, and there are many, many well-written opinions on the subject, is that you must not equate criminal trials with the administrative process.

Mr. O'HARA. My time is running out. I will ask just this: Would you not prefer a bill which would give full judicial review of all the facts and all the evidence? You think the language here is confusing and ambiguous, but if that language were made stronger so when a passport is denied to a person he can then go into the courts and have full judicial review in open court, wouldn't you prefer that?

Mr. LINDSAY. If you are going to do that, then you must come out with a bill which does not authorize the use of the administrative information at the administrative level; confidential, undisclosed information at the administrative level. There is no point in it otherwise.

The purpose of the authorization is to protect your sources and your techniques, but there are very limited occasions, we are told,

when this is necessary. That is why I say if you make it tight enough and surround it enough with safeguards, you will find it is only the rare case when you have to resort to it.

Mr. SELDEN. Will the gentleman yield there?

Mr. O'HARA. Surely.

Mr. SELDEN. I don't follow you on why you would eliminate it at the administrative level.

Mr. LINDSAY. If confidential information used at the administrative level is to be made fully public in the courts, naturally your applicant will appeal and put it all on the record.

Mr. SELDEN. Not necessarily. I think this legislation would have the effect of denying many passports to persons who would not appeal their case to the courts because they would not want the information on the record. I might add that Under Secretary Murphy so testified several days ago.

Mr. LINDSAY. I disagree with that.

Chairman MORGAN. Mr. Fountain.

Mr. FOUNTAIN. Mr. Lindsay, I believe you feel that the basic problem of this committee is to find a constitutional way of preventing hard core dedicated Communists from abusing the right of travel.

I am inclined to agree with that. However, I know there doubtlessly are many individuals who may not be dedicated Communists, but who have so little concern for our country (or maybe so much more concern for the money they can get for rendering a service to the Communist Party) that they are just as dangerous as dedicated Communists. Yet I don't know how we can write a law that would take care of all such situations. And then, assuming that to be true—

Mr. FULTON. What do you agree with? I didn't understand.

Mr. FOUNTAIN. I agree with his statement that the basic problem we face is that of deciding how to take care of hard-core dedicated Communists, and to take care of the others if we can. I am fearful that we can't.

I am more or less repeating what you said simply for purposes of emphasis.

Then, assuming that there are certain individuals who should not be permitted to travel abroad, you feel that the task is that of developing reasonable rules and regulations and controls which will be held constitutional.

Mr. LINDSAY. That is correct.

Mr. FOUNTAIN. That is all, Mr. Chairman.

Mr. BENTLEY. Mr. Chairman, a parliamentary inquiry.

I see we have two other congressional witnesses here this morning. Are we going to try to get them in this morning, too?

Chairman MORGAN. Yes, if they are willing to wait.

Mr. FASCELL.

Mr. FASCELL. Thank you, Mr. Chairman.

Mr. Lindsay, I think you made a very fine presentation and I will ask a couple of questions as briefly as I can.

Are the standards of the New York bar which you say are precise, are they the basis of criminal acts?

Mr. LINDSAY. I'm not sure I understand you.

Mr. FASCELL. Isn't each standard a criminal act?

Mr. LINDSAY. I am not quite sure what you mean here.

No. 1 definitely is. Transmitting, without proper authority, security information.

No. 2. Inciting hostilities which might involve the United States, I can't answer that. I would have to look at the code.

3. Inciting attacks by force upon the United States—

Mr. FASCELL. They all sound like they are criminal acts, don't they?

Mr. LINDSAY. Yes.

Mr. FASCELL. Therefore, the standard of the New York bar regarding the issuance of passports is based upon the fact that the individual has committed a criminal act which is duly proven or provable pursuant to due process of law.

Mr. LINDSAY. That is correct.

Mr. FASCELL. Now, do you feel—and I have listened to your discussion quite carefully—that the Federal Government ought to go beyond the standards fixed by the New York bar?

Mr. LINDSAY. As I said a moment ago, I like these standards. I would be very happy with a bill reported out that (a) defined the right to travel as a constitutionally protected right; (b) gave recognition to current-day dangers presented by the Communist conspiracy; and (c) had tightly drawn procedural safeguards.

Mr. FASCELL. Even though the act of the individual involved who has made application for passport might not be a criminal violation?

Mr. LINDSAY. That is correct, and therefore, if you adopt these standards here that are set forth by the association of the bar in its report and then surround your procedural element here with every possible safeguard to limit the use of confidential authority, although preserve it, then I think you probably have a bill that will stand up.

Mr. FASCELL. Will the procedural methods involve any constitutional question if the basic right which is denied is a violation of a constitutional privilege?

Mr. LINDSAY. I don't understand your question.

Mr. FASCELL. In other words, what difference does the procedure make if you are denying a constitutional privilege to start with?

Mr. LINDSAY. Correct. You have got two problems; substantive due process and procedural due process. That is why you've got a tough job.

Mr. FASCELL. Are you saying there can be no statutory limitation on a constitutional right?

Mr. LINDSAY. No.

Mr. FASCELL. Are you saying there can be no substantive change in the constitutional right?

Mr. LINDSAY. I am not sure what you mean. I am saying that any constitutionally protected right is subject to reasonable limitations. The classic case of limitation on freedom of speech is this one: you can't get up in a crowded theater and yell "fire." If you do you will be subject to criminal prosecution.

Mr. FASCELL. And you think there is an analogy between this and that situation? That is the right in the Federal Government to deny the issuance of a passport to any individual?

Mr. LINDSAY. Yes. For purposes of safety, you are required not to cross the street except when the sign says "walk" and you can get a summons otherwise. That is a restraint.

Mr. FASCELL. Therefore, what you see as the job is to specifically identify the grounds other than criminal acts upon which shall be delegated the authority to an executive individual to deny that passport.

Mr. LINDSAY. Yes. I think you put it a little too simply though, Mr. Fascell, because it may be that areas of criminal conduct still should be part of the standard here, nonetheless.

Mr. FASCELL. You mean whether the individual has ever been tried and found guilty or not?

Mr. LINDSAY. Yes, and I think that is part of the thinking that goes into the three areas of individual restraints that are set forth in this volume.

Mr. FASCELL. I have read very carefully your idea of an exception to this question. That is that the Secretary personally would certify that you wouldn't disclose an agent and so forth. I don't see how you can qualify this authority, in other words. This is the problem I see.

If you admit that there is a necessity to do this and that what you are trying to do is to write a straitjacket around discretion, good judgment, and authority—

Mr. LINDSAY. Now, I am not sure that any authorization for the usage of confidential information will survive the courts. I am not sure it will. It may well not. You run that risk.

All I do say is that the question is close enough so that if it is deemed essential in the interests of national and international security to preserve the device, then make it as tough as possible for the State Department to use it.

Mr. FASCELL. I got that point very clearly. I think you made your point. The only thing I was trying to get your thinking on is: What are the criteria? Who is the person to whom you would deny the passport?

Mr. LINDSAY. That is right. That is your problem.

Mr. FASCELL. I am asking you, in your judgment, whom it would be.

Mr. LINDSAY. I again refer to this volume, "The Right to Travel." I think that these three areas here are stated pretty well.

When you are talking about standards, this is part of the Hays bill, as I understand it. I think Congressman Hays has taken the standards from this volume and put them in his bill.

Mr. FASCELL. You had one exception and that was the case of the hard-core Communist. Is that right?

Mr. LINDSAY. That is in the procedural part.

Mr. FASCELL. And then you had a reservation on that and that is that you would not go back to, for example, membership in the party at any time. You say that is an unreasonable approach.

Mr. LINDSAY. You are talking about two different things. On the one hand you have got your substantive standards that you set up in the bill which will govern the Secretary of State. Then over here you have got your procedural elements. What kind of a hearing are you going to have? What kind of structure are you going to set up in order to determine whether or not Mr. X should be denied a passport under these standards? Here is where you get into your confidential information problem.

Mr. FASCELL. I was just trying to get back to the basic thing that starts the movement within the Department and that is, why do you deny? I wasn't concerned about procedure.

Mr. LINDSAY. You deny the passport when you have the case of a person who falls within specific categories. It may be that it is because he has been brought back to the United States and doesn't pay his debts; it may be that he is out on bail; or it may be that there is an allegation that his objective is to subvert the U.S. Government.

In each of those cases you have got to prove your case.

Mr. FULTON. Would you yield?

Mr. FASCELL. Certainly.

Mr. FULTON. This has been a very stimulating discussion. You people have given two citations of examples that are worthy of comment. The question here is not whether you limit the man's chances to shout "fire" when he is in the theater, but whether you prevent the wrong man from going into the theater where he might shout "fire," even whether he has not openly said he has that intention.

On the example of crossing the street, it is not that the person is given permission to cross with everybody else when it says "walk" but can the Government prevent the man from going beyond the curb in any event because he has by previous conduct shown a tendency that he might cross the wrong way, and he hasn't stated his definite intention to do so.

But here he is, a perfectly good U.S. citizen with nothing against him and you say, "You can't go beyond the curb." There is a complete negative. That is an entirely different administrative procedure under constitutional rights than the permissive use which is granted to every U.S. citizen right here.

Mr. FASCELL. Well, the gentleman is absolutely correct and it gets back to the basic problem as to whether or not you can have any limitation for particular categories.

Chairman MORGAN. The gentleman's time has expired.

Mr. Murphy.

Mr. MURPHY. No questions, Mr. Chairman.

Chairman MORGAN. Mr. Meyer.

Mr. MEYER. Thank you, Mr. Chairman.

I appreciate what you have said, Mr. Lindsay. I think I agree in general with most of what you have said. The only place where I might differ has been brought out possibly by Mr. O'Hara, Mr. FASCELL and others. I don't believe the constitutional rights of American citizens can or should be denied them without a full and open review of their case.

Chairman MORGAN. Thank you, Mr. Lindsay.

Mr. FULTON. Mr. Chairman, might I make a suggestion, that we have accepted Mr. Lindsay here as a Congressman but because of his background as an attorney, I would like a statement qualifying him at the beginning of this testimony as an expert witness.

First, he is a graduate of Yale Law School. Then he was Executive Assistant to the Attorney General of the United States from 1955 to 1957. He is a member of the bar of the City of New York, of the State of New York and the bar of the Supreme Court of the United States, as well as a member of the New York City Bar Association, the State of New York Bar Association, as well as the American Bar Association. Mr. Lindsay is a practicing attorney as well as a Congressman.

Mr. O'HARA. Will the gentleman yield?

Mr. FULTON. I yield.

Mr. O'HARA. I subscribe to most of that, but I would like to put in that he is not a graduate of the Law School of the University of Chicago.

Chairman MORGAN. Our next witness is Hon. Charles S. Gubser, a Member of Congress from the great State of California. Mr. Gubser.

Mr. GUBSER. Thank you very much, Mr. Chairman.

**STATEMENT OF HON. CHARLES S. GUBSER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. GUBSER. Mr. Chairman and members of the committee, I appreciate the opportunity of testifying in behalf of my own bill, H.R. 5575, and other bills to provide for the denial of passports to persons knowingly engaged in activities intended to further the international Communist movement.

Mr. Chairman, I consider the enactment of such legislation to be a matter of urgency. Since the Supreme Court decision of June 16, 1958, it is well known that applications for passports by persons engaged in Communist activity have increased greatly. The late Secretary of State John Foster Dulles and President Eisenhower have stated many times that such travel is not in the best interest of the U.S. Government.

It is well known that a favorite device of persons dedicated to overthrowing our system of government is to send agents abroad who can bring back instructions from international communism through the courier system. These agents also carry American funds abroad to be used in the financing of the international Communist movement. Certainly it is in the best interest of our way of life and our system of government that such travel be restricted.

Technically, freedom to leave the continental limits of the United States is a right of every citizen. But, leaving with a passport and the endorsement of the U.S. Government is a privilege.

I realize from the discussion that has taken place here this morning this is probably the crux of the entire matter.

I don't agree with the statement which has been made here this morning that a passport is nothing more than an exit permit. Practically, I think we will all agree, it is used primarily as a travel document.

We all know that it is necessary at any point of entry to present your passport and without such a travel document it is not possible to gain entry to that particular country.

Now, I'd like to raise this point: If the receipt of a passport is a right—if the right to travel is a constitutional right—why then do we issue passports at all? It obviously is something more than a right of exit. We know that its practical use is for other purposes. If it was solely for a right of exit, why then should we bother to issue them at all and set up any regulations concerning them?

Now, I contend that this right to receive this travel document which carries with it certain privileges is a privilege which is bestowed at the discretion of the executive branch of the Government.

Now, this committee, I know, has had numerous hearings with respect to the status of forces treaties. Now, I, for one, have always

defended those treaties, but in them we have a situation where American citizens are denied their constitutional rights as U.S. citizens because they are in a foreign country. They are denied the rights of habeas corpus, trial by jury and numerous others.

I bring this up merely to make the point that I believe the existence of the status of forces treaty, having been ratified by the Senate, clearly shows that all of your constitutional rights do not go with you when you are in a foreign country. I think the same point can be made with respect to the right to travel. That if you have the right to leave this country which no one denies—certainly I do not—you do not carry with you into a foreign country all of the rights that you might have in this country.

One other point I would like to make in this respect: It has been said here in this hearing this morning that reentry into this country is a right. Yet I think it is pretty generally accepted that if a person leaves this country and returns he must prove upon his return that he has been inoculated against certain diseases. If he has not been inoculated, then it is my understanding that we can require that he be inoculated before he has the complete and absolute right of reentry.

I raise that point to make another. If the reentry right—and I assume you call it a constitutional right—can be restricted with conditions which are in the general public interest—namely, inoculation against communicable disease—then why can't the exit right be restricted in the same public interest?

Mr. FASCELL. If the individual has a mental disease?

Mr. GUBSER. That is right. And to conclude my statement, it is traditional that privileges are only granted to those citizens who conduct themselves in a manner which is in the best interests of the greatest number of people. It is not offensive to our basic beliefs in liberty and freedom when the privilege of freedom is denied a murderer or other persons guilty of committing a crime against society. Since the activity of Communists is not in the best interests of society in general, I think it only proper that the privilege of receiving a passport should be denied them.

Liberty and personal freedom are things which I am very jealous about. However, I believe my liberty and freedom is the direct result of our system of free democratic government. If Communists have their way, that system of government will be abolished and with it will go my freedoms and personal liberty. It is only proper that those who would seek to restrict our constitutional liberties by overthrowing the Government which guarantees them should be restricted in the accomplishment of their avowed purpose.

I strongly urge your committee to take favorable action on some legislation restricting the passport privilege.

Chairman MORGAN. Thank you, Mr. Gubser.

Mr. Gubser, your bill, H.R. 5575, is somewhat similar to H.R. 55?

Mr. GUBSER. That is correct. As a matter of fact, I think it is identical.

Chairman MORGAN. And you feel if we passed a bill similar to the one you introduced, the same bill introduced by 16 or 17 other Members of Congress, this would be a start in the right direction?

Mr. GUBSER. I certainly do feel so, Mr. Chairman. I think that we've got to be very, very careful that we do not go overboard in a legal tangle and concern ourselves with the personal liberties of a limited few at the expense of the many.

It was some famous Supreme Court Justice who said—and I will paraphrase it—"that justice is due the accuser, as well as the accused." To me the general public interest is what counts, and if that has to be at the expense of a very few we should consider the general public interest.

Chairman MORGAN. Thank you, Mr. Gubser.

Mr. Fulton.

Mr. FULTON. I am glad to have you here and, of course, your statement is a good one. It is a case of what the degree of control should be and whether we are running into the U.S. Constitution and the basic constitutional rights.

You have used in your statement the word "privilege" and the word "right," as roughly synonymous because you can at one time see the word "privilege" being used and the next time the word "right," in the same context.

Now, which is it? Is a passport a privilege or a right?

Mr. GUBSER. Which are you speaking of, the right to leave or the right to leave with U.S. sanction? To me it is a right to leave this country but it is a privilege to leave with U.S. sanction.

Mr. FULTON. I was going to ask you that next because in your fourth paragraph in the second line you said, "But leaving with a passport" and then you add "and the endorsement of the U.S. Government is a privilege."

Does that mean leaving with a passport is the endorsement of the U.S. Government?

Mr. GUBSER. "Leaving with a passport, comma, and the endorsement of the U.S. Government is a privilege."

Or if you wish, strike "and" and insert "with" in my statement.

Mr. FULTON. You mean the passport itself has inherently in it a sort of endorsement of the U.S. Government?

Mr. GUBSER. That is correct.

Mr. FULTON. And based on the certification that this man is a citizen in good standing, that is really what I think you mean from that point of view.

Mr. GUBSER. Yes.

Mr. FULTON. But I would disagree with you thoroughly when you say a travel abroad—paraphrasing—is a privilege bestowed at the discretion of the executive branch of the U.S. Government.

I don't think Harry Truman ever had a right to restrict me from going anywhere I wanted, with no U.S. security elements involved.

Mr. GUBSER. That certainly was not my meaning. I say travel abroad "with" the implied endorsement which goes with a U.S. passport is a privilege.

Mr. FULTON. Now, you see, I disagree on that. I think that the passport is a basic constitutional right and that the passport, if I am a U.S. citizen in good standing, is a certification that I am just that at the time of the issuance of the passport. But when you put on the intent that I might do something abroad once I got that passport that might be inimical to the interests of the security of the United States, then you are guessing what I am going to do abroad and say that I am going to be a bad guy.

Now, what is it? Is it going to be the certification of my future actions abroad when I receive the U.S. passport or is it only a certification as of August 14, 1959, when I left the country, that I was a citizen

of good standing then? What is it? Is it, to you, the fact that they say, from here on we think this citizen is going to be good and you countries and peoples who receive him on his travels abroad, give him full faith and credit?

And then the question is, on what points? On my credit rating? On the fact I won't commit a traffic violation? On the fact I won't break up the furniture in some restaurant or meeting place abroad? No, I don't think it is, to me.

Mr. GUBSER. Well, from the strict technical point of view, I think your argument has merit, Mr. Fulton, but it seems to me that your argument and all others in the same vein go on the presumption that this power to restrict the issuance of passport is going to be used in a dictatorial fashion. I think whenever you have a government of law administered by men you must place your confidence in the administration of that law by men. I have never known a President or a Secretary of State that I thought would use this arbitrarily and capriciously. I feel they would do it in the best interests of the country.

I wish I had here a copy of the oath of office that the President of the United States takes. He swears to defend the Constitution of the United States against all enemies, foreign and domestic. Well, to me it is a—

Mr. FULTON. If you will let me give you two more comments on your statement; I ask unanimous consent that the oath of the President of the United States be inserted in the record at this point.

Chairman MORGAN. Without objection, it is so ordered.
(The oath referred to is as follows:)

I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States. (Sec. 1 of the Constitution of the United States.)

Mr. FULTON. You say:

It is well known that a favorite device of persons dedicated to overthrowing our system of government is to send agents abroad who can bring back instructions. * * *

That means to me, first, that it is somebody in a conspiracy who takes an act, but when you say "bring back instructions," that is a message. That is really a limitation on the freedom of speech and I wonder whether the U.S. Government can stop that under the Constitution.

You say "also carry American funds abroad." Under your statement you seem to say you are not going to let them use the funds.

It is only for the security or protection that the U.S. Government can deny or limit a basic constitutional right. I would disagree with that part of the statement.

Thank you. Your comment is fine and it has been stimulating.

Chairman MORGAN. Mr. Burleson.

Mr. BURLESON. I think you touched on a fundamental point in this discussion. You said that you have to assume that capriciousness and prejudice will not be exercised against an individual in the administration of many statutes. Probably this may even at times include the Bill of Rights and the Constitution.

Wouldn't you agree also that we have many domestic laws on the books today which are in the same category of which policies and

philosophies must be applied in their administration? We may not agree with that administration, but nevertheless the executive branch is for that purpose in the division of the powers of Government.

Mr. GUBSER. As I was saying to Mr. Fulton, in the very oath which the President of the United States takes, he assumes the obligation to defend the Constitution of the United States.

Certainly as a man he is entitled to some discretion as to what he thinks is necessary to properly defend it. We make no complaint about restraining a person from carrying security information and I don't think we should make any complaint about restraining a person who is going abroad for the purpose of overthrowing this system of government.

Mr. BURLESON. I must say I agree with the gentleman and that is all, Mr. Chairman. Thank you.

Chairman MORGAN. Mr. Bentley.

Mr. BENTLEY. Mr. Gubser, thank you for your statement.

In the next to the last line, section 8, the famous words "on the record" appear.

What do you construe those as meaning?

Mr. GUBSER. Well, I construe them to disallow the use of confidential information unless it were openly placed before the person denied the passport.

Mr. BENTLEY. Let me make sure that I understand that.

In other words, that confidential information could not be used in determining by the judicial review body—could not be used to make the decision on whether the passport should be denied or granted unless the person accused, shall we say, had access to it.

You would not permit the judge to make that decision in camera?

Mr. GUBSER. Well, Mr. Bentley, this bill was introduced March 11, and all of this controversy, if you want to call it that, regarding judicial review has come up since that time. In introducing this bill I recognized the fact that I am not a member of this committee. The principal purpose my introduction of this bill was intended to serve was to indicate that another Member of Congress favors some form of limitation. I assumed naturally the committee would write its own bill.

It is my personal belief that the passport should be denied on information which is confidential in nature, but if the person desires judicial review, then the information should be on the record and should be exposed.

Mr. BENTLEY. All confidential information to be exposed to the individual concerned?

Mr. GUBSER. That is right, if he requires judicial review of the administrative decision.

Mr. BENTLEY. And that is your construction of the language in section 8?

Mr. GUBSER. Yes.

Mr. FOUNTAIN. Will the gentleman yield?

Mr. BENTLEY. Yes.

Mr. FOUNTAIN. I understand the State Department would object to that because it would have to disclose some of the sources of their information. They wouldn't mind giving away the information, but they hate to disclose the sources.

Mr. GUBSER. As a practical matter, I think the type of people who would be denied a passport would probably not want it on the record and they wouldn't ever appeal the thing.

Mr. FULTON. Wouldn't that open the FBI files?

Mr. BENTLEY. Wait a minute. You boys are working on my time here.

Mr. Chairman, I have another minute.

Chairman MORGAN. Mr. Bentley has the time.

Mr. BENTLEY. I would like to ask one more question.

As I recall the language in the passport itself, it requests the foreign authorities of any government of any country to which the person may be traveling, to render to him all rights and privileges accorded the citizens of that particular country traveling in the United States. Is that generally correct?

Mr. GUBSER. I think so.

Mr. BENTLEY. Wouldn't that assume that the contention, then, is that the bearer will so conduct himself while abroad that he would be entitled to those rights and privileges that a foreign government would normally extend to aliens passing through their territory?

Mr. GUBSER. I would assume so.

Mr. BENTLEY. Doesn't that assume, then, that the passport-issuing authority believes that the bearer will conduct himself in accordance with normal standards of good conduct and that sort of thing?

Mr. GUBSER. Yes; I would think it would assume that, but in the light of this present Supreme Court decision, the issuing official is required to issue the passport whether or not he believes the person will so conduct himself.

Mr. BENTLEY. And isn't the Supreme Court decision inconsistent with the language of the document itself?

Mr. GUBSER. I had never thought of that point before, but it certainly sounds reasonable.

Mr. BENTLEY. Thank you, Mr. Chairman.

Chairman MORGAN. Mr. Selden—

Mr. SELDEN. Thank you, Mr. Chairman.

Let me commend you, Mr. Gubser, for an excellent statement and one that certainly goes right to the point.

Mr. FULTON. Would you yield for a question on that point?

Mr. SELDEN. Yes, I yield.

Mr. FULTON. Mr. Chairman, could we have put in at the point in the record where the gentleman from Michigan was speaking, the language commented on in the passport document itself, so that we can compare?

Chairman MORGAN. Without objection, it is so ordered.

Mr. FULTON. Thank you.

(The information appears on p. 122.)

Mr. SELDEN. With regard to your exchange with Mr. Fulton, Mr. Fulton referred to "any citizen in good standing". I would like to point out that your bill and the bill that I and others have introduced doesn't apply to "any citizen in good standing," it applies only to a citizen who is a member or former member of or affiliated with the Communist Party, or who knowingly engages or has engaged since 1948 in activities intended to further the international Communist movement.

Also, the Secretary of State is authorized to deny a passport to that person only after it is determined that his or her activities or presence

abroad under the findings made in section 5 of this legislation would be harmful to the security of the United States.

So, I don't think it applies to any citizen in good standing, and I think that should be clear in the record.

Mr. FOUNTAIN. Will the gentleman yield at that point?

Mr. SELDEN. Yes.

Mr. FOUNTAIN. Then, is it true that a former Communist might not be denied a passport unless a decision is made to the effect that this travel would be injurious to this country?

Mr. SELDEN. That is right.

Mr. FULTON. But you certainly don't put the criterion of your basis of decision that it is the U.S. citizen in good standing before or after the year 1948?

Mr. SELDEN. I said he could be a citizen in good standing. This legislation does not apply to any citizen in good standing. That is the point I am attempting to make, and I think you will concur with me on that.

Mr. FULTON. As long as you say that the cutoff point of the year 1948 is not the cutoff point also for a citizen in good standing.

I don't know that I agree with your general definition of a citizen in good standing and not a citizen in good standing.

Mr. SELDEN. I am not attempting to define a citizen in good standing. I am only saying this legislation doesn't apply to any citizen. It applies only to those citizens, some of whom you may consider in good standing, who fall into the categories outlined in the legislation.

Mr. FULTON. This is a good comment. That clears it up.

Chairman MORGAN. Mr. O'Hara?

Mr. O'HARA. Mr. Gubser, everyone, I think, and certainly I, agree with your statement here that it is only proper that those who would seek to restrict our constitutional liberties by overthrowing the Government should be restricted in the accomplishment of their avowed purposes.

Now, may I ask you, Mr. Gubser, if one has avowed that his purpose is to overthrow the Government of the United States, have we not now statutes under which he can be proceeded against?

Mr. GUBSER. I think we have. I think it is also an accepted fact, however, that that criminal prosecution has not been carried out against all people who have such an avowed purpose.

Mr. O'HARA. Now, what do you mean by "avowed purpose"? If one stands on the corner and said, "Now, I want you all to rise up and overthrow this Government," he is avowing a purpose and could be proceeded against; couldn't he?

Mr. GUBSER. Let me first tell you this statement was not written with the intention that it should be couched in legal terms. I am a farmer. But even though I am not trained in the law, I do not believe that restrains me from applying the law of commonsense. So I would request of you, and since I know you are a well-qualified lawyer, not to interpret my statement in strict legal technical terms.

Perhaps if I were arguing this in a court of law, which I naturally wouldn't be because I am not a lawyer, the word "avowed" would not be there.

Mr. O'HARA. I think the gentleman misunderstands me, but unfortunately I have a limited vocabulary. The word "avowed" is a pretty big word. Does that mean a man suspected of being a traitor to his country?

Mr. GUBSER. I mean a man who, in the opinion of the person issuing the passport, is going abroad for the purpose of subverting the U.S. Government.

Mr. O'HARA. Then would you hold that one under suspicion by the Department of State is one who is an avowed conspirator?

Mr. GUBSER. That is right. And I believe we should have confidence in our elected officials to apply this in the best interests of the country and for the benefit of the greatest number of people.

Mr. O'HARA. But you do think—and I have gotten this impression—that if one is denied a passport on information of a secret nature, then all of the evidence, including that secret information, should be reviewed by a court, publicly reviewed? You believe that?

Mr. GUBSER. If the person who has been denied the passport requests it; yes.

Mr. O'HARA. Thank you.

Chairman MORGAN. Mr. Fountain.

Mr. FOUNTAIN. Mr. Chairman, what I am going to say is simply repetition, but I am doing it for emphasis.

We all recognize certain constitutional rights. Whether you call them rights or privileges, as far as I am concerned it doesn't matter. Because I think we also must admit that any right is subject to reasonable rules and regulations. The problem is, what is a reasonable rule and regulation?

For instance, we talk about confidential information repeatedly in the courts. Maybe not before an individual is convicted, but when the question of punishment comes up, which is about as important, confidential information is quite often revealed to the judge and it may oftentimes determine whether one gets a 10-, 20-, or 30-year sentence.

It seems to me that as long as we admit that our rights are subject to reasonable rules and regulations, we are bound to place some discretionary authority in the hands of somebody.

We should be cautious to adopt rules and regulations which will not be abused to the detriment of good, loyal Americans.

Chairman MORGAN. Mr. Fascell.

Mr. FASCELL. Mr. Gubser, I think you have a very practical approach to this problem in nonlegal terms. I think you have stated the issue, pure and simple, and that is whether we are going to allow the Secretary of State to deny passports to Communists or anyone affiliated with the Communist Party, or to other people who meet the criteria of this proposed legislation.

And that gets back to the question as to whether you want to restrict them for any reason, or for the reasons stated in the act, because you believe what they have done or what they are about to do is against the best interests of the country.

Once you cross that bridge the rest of it, as far as I am concerned, is mere technical detail. And I assume that is the way you feel about it.

Mr. GUBSER. That is right.

Mr. FASCELL. In other words, you are getting at the basic point, which is, you think it is absolutely essential, it is right and it is necessary for the Federal Government to deny a passport to an individual who meets the criteria under this act?

Mr. GUBSER. I certainly do. And may I ask the gentleman a question?

Mr. FASCELL. Yes.

Mr. GUBSER. Is it true, that in criminal law an arresting officer has the right to arrest on suspicion that a felony is about to be committed?

Mr. FASCELL. Sure. Whether he can hold him or not, is something else again, but he can arrest him.

Mr. GUBSER. Isn't that a little bit analogous to this, that the passport issuing officer would have the right to deny the passport on suspicion that the person getting it is going to engage in an activity which would subvert the United States?

Mr. FASCELL. I don't know, Mr. Gubser, but I know this, that the right of an individual to a passport has been proscribed, circumscribed, limited and otherwise refined. As long as that has been done in the public interest, it would seem to me that another restriction, legitimate in the public interest, would not violate any great constitutional principles.

It is not the restriction in itself on which there is argument. You will understand there is argument on whether or not you should even restrict.

Then you get into the next question, which is whether or not the evidence presented is in itself sufficient to allow a denial under the restriction fixed by law.

Then you get into another field, the question of the discretion of the individual who must administer the law.

Chairman MORGAN. Mr. Meyer—

Mr. MEYER. Thank you, Mr. Chairman.

Mr. Gubser, I think you have come to the point in quite practical terms, and I guess most of those who have questioned you are lawyers but you are a farmer and I am a forester, and I will try to speak your language.

For instance, I think of the following words, "pursuit of life, liberty and happiness."

Now, if we have the right to live, we couldn't actually have the right to live if we were denied water. And in a certain sense, if we have the right to travel, we don't have the actual right to travel if we are denied a passport because of procedures.

I think I read once about a famous scientist who went to study in Germany and they demanded his birth certificate. He said, "I don't have a birth certificate. But the very fact I am here proves I have been born."

But generally there is a regulation that you need a birth certificate. Also, it happens to be a regulation that to travel (unless you want to swim around in the ocean), you need a passport. So that is the way I look at this thing.

What we are going to do about it, I don't know. I know we have a problem, but the point was brought out, I believe by Mr. Selden, that a Communist possibly wouldn't be a citizen in good standing.

Now, is this necessarily true that a Communist couldn't be a citizen in good standing? It brings up this question of what his avowed purpose is. The fact that he is or is not something doesn't necessarily answer the question—Mr. O'Hara brought out this point about avowed purposes and what they are.

Do you agree that we have to prove that the man definitely plans to do something that is really against the interests of the United States to deny him a passport?

Mr. GUBSER. In the first instance, speaking at the level of administrative decision, I believe that the officer should deny the issuance of the passport if he has reasonable cause to believe or suspect that the person is going to engage in a subversive activity.

Insofar as proof is concerned, if a hearing is demanded—and I repeat, I don't think there usually will be for practical reasons—then I think we've just got to get down to a legal situation, and I would guess you would have to prove it; which would be difficult to do, I grant you.

Mr. MEYER. And you also feel, and I think I can fully agree with you here, if you take this position that a man would be entitled to a review of his case and to see the accusations against him?

Mr. GUBSER. Yes, I would say he would be entitled to it.

Mr. MEYER. I think I could go along with that.

Thank you very much.

Mr. SELDEN. Would you yield there?

And don't you think, Mr. Gubser, that the bill, H.R. 55, your bill and the other bills, would comply with that standard?

Mr. GUBSER. I do.

Chairman MORGAN. Mr. Bentley—

Mr. BENTLEY. Mr. Chairman, let me read at this point into the record the request Mr. Fulton, the gentleman from Pennsylvania, made about the wording of the passport. It says:

I, the undersigned, Secretary of State of the United States of America, hereby request all whom it may concern to permit the above named citizen of the United States safely and freely to pass and in case of need to give such aid and protection as would be extended to like citizens of foreign states in the United States.

To me, Mr. Gubser, that is definitely an assumption that the individual is going to conduct himself while abroad certainly in accordance with what the State Department would deem our best interests, our security and standards expected of an American citizen.

Mr. FASCELL. The presumption is that every citizen will obey the law, Mr. Bentley, anywhere.

Mr. BENTLEY. You mean their law or our law?

Mr. FASCELL. Any law. The presumption is that the citizen will obey the law.

Mr. BENTLEY. Wait a minute, Mr. Fascell.

Mr. FASCELL. "Only Democrats," Mr. O'Hara says.

Now, will the gentleman yield further?

Mr. BENTLEY. Is the presumption that he is going to obey the law of the land or also the U.S. law?

Mr. FASCELL. Any law.

Mr. BENTLEY. What may be a crime against our law may not be a crime in the country he is traveling in.

Mr. FASCELL. That doesn't give the individual a right presumptively in law or otherwise to disobey a law in the forum in which he happens to find himself at the time.

Mr. BENTLEY. I understand that, but does it give him the right to disobey American law if he is not in the United States?

Mr. FASCELL. He would find it very difficult to disobey American law while in Africa.

Mr. BENTLEY. Well, possibly. Possibly not, but why do you make that statement?

Mr. FASCELL. I say he would find it very difficult because the field is extremely narrow.

For example, if he advocated treason against the United States in Africa, it would be a violation of U.S. law.

Mr. BENTLEY. Not of African law.

Mr. FASCELL. If he advocates murder, it might be against the law in Africa.

Talking about the free right of travel, the fact is that you have to have a passport to leave.

Law to the contrary notwithstanding, as Mr. Meyer points out, unless you want to swim around the Cape of Good Hope you are still going to have to have one of these documents.

Mr. BENTLEY. You don't need this document to leave if you are going to certain parts of the Western Hemisphere now, do you?

Mr. FASCELL. Is that fixed by law?

Mr. BENTLEY. It depends upon whether or not the country to which you are going requires a passport as a condition of entry. Mexico will let you come in without a passport.

Mr. FASCELL. So our right as American citizens to travel can be proscribed by another country, and is.

Mr. BENTLEY. That is a known fact.

Mr. O'HARA. Mr. Chairman, may I compliment the witness. I think he is one of the best witnesses we have had before our committee.

Chairman MORGAN. Thank you, Mr. Gubser.

The committee stands adjourned until 10:30 tomorrow morning.

(Whereupon, at 12:35 p.m., the committee adjourned, to reconvene at 10:30 a.m., Wednesday, August 19, 1959.)

PASSPORT LEGISLATION

WEDNESDAY, AUGUST 19, 1959

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, D.C.

The committee met, pursuant to adjournment, at 10:40 a.m., in room G-3, U.S. Capitol, Hon. A. S. J. Carnahan presiding.

Mr. CARNAHAN (presiding). The committee will come to order.

This morning we have a continuation of hearings on various passport bills.

I have here a copy of a statement of Lee R. Pennington, assistant director, National Americanism Commission of the American Legion; a statement of the U.S. section of the Women's International League for Peace and Freedom; and a statement by the American Civil Liberties Union. These are submitted for the record and, without objection, will appear as a part of the record.

(The statements are as follows:)

STATEMENT OF LEE R. PENNINGTON, ASSISTANT DIRECTOR, NATIONAL AMERICANISM COMMISSION OF THE AMERICAN LEGION, AUGUST 6, 1959

Mr. Chairman and members of the committee, since its birth some 40 years ago, the American Legion has vigorously fought the international Communist conspiracy which seeks ultimately to enslave the world. We are, therefore, very much interested in H.R. 55 and similar bills which have for their purpose the denial of passports to persons knowingly engaged in activities intended to further the international Communist movement.

The American Legion supports this legislation and we would like to briefly point out what we feel are compelling reasons for its enactment.

1. The President's statement before a joint session of the Congress on January 9, 1958, warns, "what makes the Soviet threat unique in history is its all-inclusiveness. Every human activity is pressed into service as a weapon of expansion. Trade, economic development, military power, arts, science, education, the whole world of ideas—all harnessed to this same chariot of expansion. The Soviets are, in short, waging total cold war."

2. With that warning from a source fully acquainted with both the internal and international pictures, it is difficult to envision the U.S. Supreme Court just 5 months later ruling in effect that the executive branch of the Federal Government had no legislative authority to deny passports to Soviet agents and other subversives residing in the United States. Consequently, since the High Court's decision in the *Rockwell Kent* and *Walter Briebl* case on June 16, 1958, our Government has had no alternative but to reluctantly issue passports to hundreds of known Communists and supporters of the international Soviet conspiracy.

3. The Secretary of State turned down passport applications of Kent and Briebl on the grounds that they were Communists and that they had constant and prolonged adherence to the Communist Party line. The Supreme Court reversed two lower Federal courts and held that since statutes provided that it is unlawful for a citizen to enter or leave the United States without a valid passport, the Secretary of State did not have authority to promulgate regulations denying passports to Communists or to persons whom evidence showed were going abroad

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to further Communist causes or regulations demanding non-Communist affidavits from citizens applying for passports. Three Supreme Court Justices dissented in all regards stating that the Secretary of State's passport permitted the regulations in question.

4. Roderic L. O'Connor, Administrator of the Bureau of Security and Consular Affairs of the Department of State, in a speech before the Veterans of Foreign Wars in Washington, D.C., on November 8, 1958, declared: "In our view, control over the issuance of passports has been an important part of our defenses against indirect Communist aggression. Under the law today, that part of our defense against Communist subversion no longer exists. Your Government is today powerless to deny passports to known Communists who are going abroad for the purpose of assisting and supporting the international Communist conspiracy * * * As a result of * * * (the Kent) decision, the State Department has received as of early this week 596 (702 as of December 15, 1958) applications for passports from persons who have records of activity in support of the international Communist movement. Before the Supreme Court's decision many of those persons had been refused passports or had abandoned their applications when asked to identify themselves as Communists."

The Government official said, "since the Kent decision, these persons have moved promptly to take advantage of the breach in our defenses. They are getting their passports while the getting is good." O'Connor stated the Department of State believes "that this is a dangerous situation and one which needs to be cured promptly. It can be cured by legislation giving to the State Department authority to deny passports to Communist supporters. The Department sought to obtain such legislation in the last session of Congress. Although the House passed a bill, the Senate failed to act * * * we hope to obtain such legislation in the next (86th) Congress." In his concluding remark, O'Connor reiterated the seriousness of the situation by emphasizing that "until such legislation is passed, your Government remains helpless to prevent American Communists from traveling abroad to conspire against our national interest, and in some cases even against our national security."

5. The aforementioned Roderic O'Connor appeared at the December hearing of the Senate subcommittee and testified in detail regarding certain statements contained in his November 1958 speech. During the course of his testimony and on a subsequent occasion, O'Connor furnished the subcommittee a total of 702 names of individuals who applied for passports subsequent to the Kent ruling. The State Department official identified these persons as having supported the "international Communist movement." He also declared these individuals "are soldiers in the cold war—but they are soldiers of the enemy. They are just as clearly the enemy as were the troops abroad that shot at you and me in World War II. They are going abroad under instructions to render service to the Communist conspiracy." At the time of O'Connor's testimony, 642 of the 702 applicants had been furnished passports by the Department of State. Of these 702 persons, the names of 30 were made public.

6. FBI Director, J. Edgar Hoover, in a statement appearing in the Detroit Free Press of March 3, 1959, said: "In recent months many leading Communists have been able to travel to the Soviet Union because of the easing of restrictions in the issuance of American passports." The 21st Congress of the Communist Party of the Soviet Union was held in Moscow on January 27 to February 5, 1959, and Mr. Hoover said that the attendance of two leading American Communists at this Congress in an official capacity is indicative of the close affiliation which presently exists between Moscow and the Communist Party, U.S.A. Their presence in Russia, along with the other Communists (previously mentioned) * * * is a harbinger of things to come—namely, an increasing number of American Communists who will be visiting Russia and other Communist countries.

Viewing the passport situation as a matter of extreme urgency, the American Legion recently went on record in support of remedial legislation to curb this dangerous and unrestricted use of passports by subversive elements. At its 1958 National Convention and again at the meeting of its National Executive Committee, last spring, the American Legion approved of "corrective legislation by our National Congress which will permit the executive branch of the Government to control and regulate the issuance of passports."

In closing we would like to express the appreciation of the American Legion to you, Mr. Chairman, and all the members of the committee for your courtesy in affording us an opportunity to present our views on this most important legislation. Again, we urge you to give it favorable consideration.

STATEMENT OF WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, U.S.
SECTION FOR PROPOSED PASSPORT LEGISLATION

The Women's International League for Peace and Freedom, which has members in many countries, knows from 44 years' experience how vitally important is freedom of travel, along with freedom of international communication. The league has so testified both to this committee and to others in the past and is glad to reaffirm its support for the principle at this time.

Tough freedom of travel is an integral part of our American democratic tradition, a mood of fearfulness for national security has sometimes cast doubt on this fundamental right. The league is firmly convinced that a policy of timidity, leading to the multiplication of restrictions, does not promote security but, on the contrary, endangers our own liberties and democratic order. We believe that the right to travel is a basic liberty written into the Bill of Rights and to deprive any citizen of such right is a denial of due process. Though such a right might be suspended in times of great danger to national security, there is no justification for such denial at this time. We would welcome, therefore, such proposals as positively support the principle of freedom of travel and liberalize the existing regulations by extending the term of the passport to 3 years as proposed in a bill before the Senate Committee on Foreign Relations.

The Women's International League for Peace and Freedom has for its main purpose the promotion of peace among all peoples and nations. To secure peace in freedom, which is our motto, there must be understanding of the problems of all nations. Knowledge of these problems depends in turn upon the greatest freedom of movement from one to the other. There must be more and not less opportunity for international contacts without reference to political opinions and ideological convictions. As our highest court has stated, it is just as important for an American citizen to have the right to travel as it is for him to choose the food he eats, the clothing he wears, or what he desires to read. To deny one is to deny the other.

By this reasoning, the league strongly opposes the type of legislation proposed in a number of bills before this committee. These purport to protect the United States from external danger by denying passports to certain persons who are held to be agents of the international Communist movement. The league believes that there are more appropriate means for protecting this Nation against communism and subversion than by subjecting the political beliefs and associations of Americans who wish to travel to scrutiny by an administrative agency.

We submit that it is against the spirit as well as the specific guarantees of the Constitution to grant any executive agency the power to act on the determination that anyone's travel abroad is contrary to national security. For this reason the league also cannot support H.R. 5455. Although this bill states "Travel by citizens should be as free of Government restraint as possible consistent with the requirements of national security," it nevertheless includes provisions for denial of passports on grounds which leave to the administrative agency tremendous scope for definition and application. Even though a review of decisions is provided for, this measure could in practice permit serious administrative interference with the freedom of movement for all citizens which the bill endorses. Moreover, it contains statements of findings contrary to the emerging policy of friendship with the Soviet Union.

In signing the Universal Declaration of Human Rights, the United States pledged itself "to promote respect for these rights." Article 13 of the declaration provided that "Everyone has the right to leave any country, including his own, and to return to that country." Since conflicting views have been raised in proposals currently before this committee, we earnestly urge that the committee not report any bill purporting to give the Department of State the right to deny passports for political reasons. But we urge you rather to uphold the right of citizens to leave freely and to return to the United States.

STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION ON H.R. 7006, H.R. 2468, AND H.R. 5455 GOVERNING THE AUTHORIZATION AND USE OF PASSPORTS, AUGUST 19, 1959

The American Civil Liberties Union is a nonpartisan organization of private citizens founded 39 years ago to promote and defend the rights guaranteed by the Bill of Rights and the Constitution. Among these rights is the freedom to travel, both within and without the United States. This freedom, as defined by the Supreme Court in *Kent & Briehl v. Dulles*, is one element of that "liberty" secured by the fifth amendment, of which no person may be deprived without due process of law. This freedom, we believe, is also an integral element of the rights guaranteed by the first amendment, for without it beliefs can be stifled, associations thwarted, and the press obstructed; and by the ninth and tenth amendments.

This view of the right to travel underlies the following formal statement of the Union's position:

"An American citizen has the right to travel within this country and also the right to travel to and within any other country with which this country is not at war.

"He is entitled to a passport identifying him in such foreign travel provided he is under no legal obligation, by reason of criminal or civil process, to remain within the United States.

"In case of refusal or delay in the issuance of a passport, full disclosure of the reasons shall be given with the right to a prompt and full due process hearing and court review."

Our position, based firmly on the belief that freedom of travel is a constitutional right, rejects the assertion that there may be any restrictions placed upon the issuance of passports on either a personal or a geographic basis, except in the case of an individual under criminal or civil process (i.e., when he is compelled to appear in a court or to comply with its demands), or in the case of a country with whom we are at war.

The right to travel is not, of course, absolute. But here, as with other constitutionally protected liberties, the right may be inhibited only upon a showing that the inhibition is justified by the presence of extraordinary circumstances—circumstances which clearly and presently threaten the continued life of our Nation. We do not believe that such extraordinary circumstances now exist. The curbing of a constitutional right is even more grievous when the limitation flows from an individual's political status. Prior to the decision of the Supreme Court in *Kent & Briehl v. Dulles* in June 1958, passports were withheld from individuals not only for failing to reply to the questions pertaining to past and present Communist Party membership, but even in cases where Communist Party membership was not in issue, passports were withheld from individuals because of unpopular beliefs and associations. But we maintain that, absent a clear and present danger, a person's beliefs and associations, no less his intention to speak critically of any aspect of American life—freedoms which are constitutionally protected at home—cannot be grounds upon which to deny him the necessary documents to travel abroad. As Justice Stewart well said in *Kingsley Pictures Corp. v. Regents* (27 Law Week 4492, 4493), " * * * the first amendment's basic guarantee is of freedom to advocate ideas * * * . Its guarantee is not confined to the expression of ideas that are conventional or shared by a majority."

With respect to acts abroad which it is believed would threaten the security of our Nation, it is our belief that there are ample methods for dealing with this problem other than by refusing to issue a passport to the individual concerned. It seems to us that if the Federal law enforcement authorities have sufficient information to warrant the belief that an individual intends to commit abroad a crime against the United States, there are two courses open to them. If the plans to commit the crime have been formulated in this country, a properly drawn indictment for conspiracy would seem to be the correct remedy. On the other hand if there is not sufficient evidence to warrant such an indictment, it would appear to be beyond the reach of the Government to attempt to interfere with travel of a citizen merely because it is suspected that he intends to commit a crime against the United States abroad. Such a suspicion is necessarily problematical. It should and could be further substantiated by counterintelligence surveillance. If it is then established that a crime has in fact been committed which violates the laws of the United States, the evidence should be marshaled to await the return of the individual or, if possible, international extradition proceedings should be instituted.

In brief, a criminal prosecution should be instituted if a crime has been committed in this country. If no crime has been committed, there is no civil liberty principle which prohibits continued surveillance, but there is a civil liberty principle which prohibits the abrogation of the constitutional right to travel on the basis of a surmise that an individual harbors the intent to commit a crime. Bare intent will not sustain a prosecution; no more should it sustain the restriction of a basic liberty.

A further question we wish to discuss is the continuing claim made by the Government that discretion in the issuance of passports is intimately associated with the conduct of our foreign affairs and that passports may, therefore, be invalidated for travel to specified geographical areas. In a very real sense it is true that passports and foreign relations are closely related, for when Americans travel abroad they are the representatives of our country. As such their activities and behavior very likely have as great an impact upon our foreign relations as do official acts and pronouncements. Yet we imagine no one would justify the revocation of a passport—a constitutional right recognized by the Supreme Court in *Kent & Briehl v. Dulles*—because a U.S. citizen conducted himself abroad with something less than dignity or maturity.

But this, of course, is not what the State Department means when it claims that passports and foreign relations go hand in hand. Its meaning rather is that the execution of foreign policy—e.g., with regard to Communist China—defines and may restrict the exercise of constitutional rights otherwise available.

It is not within the organizational competency of the ACLU to argue for or against any purpose of foreign policy. However, we maintain that whatever may be such purpose, it must not be implemented by methods which violate a constitutional freedom. To admit the contrary would be to admit as well that any legitimate function of government may be carried on by any means whatsoever, whether or not it violates fundamental liberties. The exercise of the power over foreign affairs stands in no favored position in comparison with any other power of the Federal Government. Although foreign affairs are a grave matter, particularly in today's world, their constitutional bounds must be observed, as are those of the power to tax or the police power. The essence of our form of government is the recognition of the fact that goals must invariably be approached by means which are consonant with constitutional guarantees of individual freedom.

It is for these reasons that the American Civil Liberties Union has been supporting the case of William Worthy, who has been denied a passport because he refused to agree not to travel to those countries for which the Department of State has refused to validate passports. Our support of that case is based simply on our belief that the Government has no right to deny American citizens the right to travel by closing specified geographical areas to them.

Having stated our views generally on the constitutional questions which we believe are raised in this area, we would like briefly to comment upon the several bills now before this committee.

H.R. 7006—we are opposed to this bill, because we believe it presents substantial dangers to civil liberties. The principal danger lies in the vague language of section 2 which refers to "any person * * * [who] knowingly engages in activities for the purpose of furthering the international Communist movement * * *". *U.S. v. Lattimore*, 215 F.2d. 847 (C.A.D.C. 1954) is an excellent case to demonstrate the deficiencies of this bill. There the language under scrutiny was an indictment charging that the defendant had testified falsely when he said "that he had never been a sympathizer or any kind of promoter of communism or Communist interests." The court of appeals affirmed the dismissal of this count on the ground that it was void for vagueness. It was pointed out that "not only is it a basic rule that 'criminal statutes must have an ascertainable standard of guilt or they fall for vagueness,' but it is equally well established that an indictment must charge an offense with such reasonable certainty that the accused can make his own defense." (At p. 849.)

There are indeed activities which assist the cause of communism, but there are also activities of which no one can say with certainty that they are for the purpose of "furthering the international Communist movement." Statements of belief that do not agree with the official U.S. policy might conceivably be so characterized. Statements or acts which do not contravene official policy but which bring discredit upon the United States might also be so characterized.

In addition, all the legal problems of proving subjective intent are here magnified in the absence of customary judicial procedure. And the problems are further augmented by shifting to the applicant the burden of disproving that he "knowingly engages in activities for the purpose of furthering the international Communist movement." This is a remarkable inversion of due process which offends

the fundamental presumption of innocence that is an essential—an absolute—element of our criminal law. If it be claimed that all these objections fall because this is not a criminal statute, we would reply that its sanctions so far deprive the affected individual of his freedom of movement, that it should properly be so treated. If the authority to restrict the issuance of passports is to be legislated, full due process safeguards must be provided, a point which a host of court decisions in the past decade have made abundantly clear. H.R. 7006 does not provide these safeguards. In addition to the vague language and the disregard of due process contained in this bill, it suffers from the vice of authorizing the use of confidential information and sources in violation of the sixth amendment. Section 7(b) permits nondisclosure of information "which would have a substantially adverse effect upon the national security or the conduct of foreign relations."

As recently as June 30 last, Mr. Chief Justice Warren had this to say (in dictum) on the question of confrontation:

"Certain principles have remained immutable in our jurisprudence. One of these is that where government action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurious or persons motivated by malice, prejudice or jealousy. We have formulated these protections in the requirement of confrontation and cross-examination. They have ancient roots." *Green v. McElroy*, 27 Law Week 4528, 4534.

This is a statement to which the ACLU enthusiastically subscribes. We commend it to Mr. John W. Hanes, Jr., Administrator of Security and Consular Affairs, Department of State, who appeared before this committee on August 5, 1959. Discussing provisions for furnishing an applicant with a résumé of any confidential testimony considered by the hearing board, Mr. Hanes said "this would mean giving him everything except the identity of the source. The applicant would then have due notice of the points in issue and would be given adequate opportunity to rebut this information." But the opportunity would not be adequate at all in the absence of knowledge of its source, as Mr. Chief Justice Warren so well points out above.

In an area where competing values adduce serious conflicting arguments, we must make a judgment one way or another. We have chosen in favor of the individual and the historic tradition of confrontation and cross-examination. We reason that liberty abridged in the name of security is an insupportable anomaly in the absence of a clear and present danger to that security. It is painful enough to sacrifice freedom to accommodate the exercise of the power to wage war effectively (See *Hirabayashi v. U.S.*, 320 U.S. 81—a decision to which the ACLU was opposed). It is more painful—and infinitely more perilous—to sacrifice constitutional rights where the countervailing value is asserted in the absence of a clear and present danger.

H.R. 2468 and H.R. 5455—we find H.R. 2468 completely unacceptable. Although it purports to grant statutory authority to the Secretary of State to regulate reasonably the issuance of passports, it in fact grants him unlimited and arbitrary authority to deny passports on the grounds, among others, that he alone believes to be "prejudicial to the interests of the United States." The absence of any statutory standard to limit the discretion of the Secretary, enables him to arbitrarily prevent the travel of any U.S. citizen abroad for reasons that he deems inimical to the goals of the Government's foreign policy at any given time. Manipulation of the constitutional right to travel could be subordinated to what is merely a judgment by the executive branch as to what is a desirable means to implement a policy decision. Constitutional rights may not be so lightly treated.

Apart from the discretion which this bill grants to the Secretary—about whose constitutionality we have serious doubts—the bill also allows the Secretary of State to refuse to issue a passport "whenever there is reasonable grounds to believe that the applicant * * * is going abroad * * * for the purpose of engaging in activities which will further the aims and objectives of any party" which, in effect, seeks to aid the Communist movement. The vague and uncertain language of this section likewise grants to the Secretary almost limitless discretion to withhold a passport from any individual who is associated with an unpopular cause but which is in no way unlawful.

The provisions of H.R. 5455 largely follow those that appear in H.R. 2468. It too attempts to protect our Nation's security by sacrificing large areas of freedom to the arbitrary control of the Secretary of State.

The power of our Government to prosecute swiftly any individual who has committed a crime affords ample protection for our Nation's security without invading areas of freedom protected by our Constitution.

We would like to express our wholehearted agreement with the view of Mr. Hanes that these bills are far too broad and far too restrictive. Our objections, of course, go beyond that but we are pleased that the administration recognizes the serious imperfection of H.R. 2468 and H.R. 5455.

Mr. CARNAHAN. We are honored to have as our first witness our distinguished colleague, the Honorable Emanuel Celler, a Representative from the great State of New York.

Congressman Celler, we are delighted to have you before the committee and you may proceed as you wish.

STATEMENT OF HON. EMANUEL CELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. CELLER. Thank you very much, Mr. Chairman.

I am indebted to you and the members of your committee for the opportunity to appear here this morning and express my views on passport legislation.

Last year about this time I had the privilege of appearing before this committee on the very question which confronts you today: Should we have passport legislation and, if so, what form should it take?

Last year I spoke in favor of a bill which I had introduced and which took the positive approach to this problem. Rather than restrict the travel of Americans, my position was that we should concern ourselves with assuring to our people the right to travel.

As was clearly stated in the case of *Kent v. Dulles*, October Term, Supreme Court, 1957, the right to travel is a constitutional right.

Events of this past year have, I think, further justified my position. At a time when three top Communists of the Soviet Union, Khrushchev, Mikoyan, and Koslov have and will be given a red carpet tour of our country, is it not incongruous to restrict the travel of American citizens on the ground that they have leftist organizations?

How can one with straight face say to a full-blooded Communist murderer like Khrushchev that he can come here, whereas a fellow traveler can't go there?

At a time when Andrei Tupelov, the leading Russian designer of jet aircraft, is shown the assembly line of our Thor intermediate range ballistic missile, is it not anomalous to be so obsessed with security that we insist on legislation which will allow the Secretary of State to deny passports to an Arthur Miller, or even a Paul Robeson—whose views I detest?

Vice President Nixon was shown a nuclear powerplant because Mikoyan and Koslov had seen one of ours, and we have offered Khrushchev the privilege of seeing our military bases. There may not be too much more for the Russians to know concerning our weapons, conventional or nuclear.

Although I had profoundly hoped this committee would act favorably on my "Right to Travel" bill in the 85th Congress, the overwhelming vote in the House of Representatives approving the restrictive legislation endorsed by this committee convinced me that it

would be unrealistic to expect favorable action on nonrestrictive legislation at this time.

However, I believe there is a middle ground on which the security conscious and the freedom conscious can meet.

The Hays bill H.R. 8329, contains the formula which, with some modifications, I would accept. If what the security conscious are concerned with are certain activities against the United States abroad, then let us write legislation denying passports where there is a reasonable anticipation of certain defined activities rather than beliefs, associations, or the holding of opinions.

Unfortunately, however, most of the proposals before this committee would deny an American his right to travel, not because of evidence that the applicant was about to commit an act—I emphasize “act”—with serious consequences to the national security, but rather on the basis of who are his friends, what he said in the past, and what some minor functionary concludes his beliefs were or are.

Thus a disposition to engage in any activity unfavorable to the United States would be sufficient cause for denial.

I think yesterday the distinguished Senator from Minnesota made some very caustic and abrasive remarks about the attitude of our Nation at the Geneva Conference on their nuclear tests. They were indeed almost horrendous, I am sure, in the opinion of the Secretary of State.

Now, had he not been or were he not a Member of the Senate, in view of what he said I am sure some functionary in the State Department, if that same gentleman made an application for a passport, would have had his passport denied because that would be deemed activity unfavorable to the United States and some of the bills before you contain just such phraseology.

However, there may be vital differences among those who were being denied passports as to their activities abroad. Some would criticize the U.S. policy, or praise Soviet policy, or attend a peace conference. Others would transmit secrets, others would in fact do nothing disadvantageous to the United States. There obviously are significant qualitative differences among these activities.

Under our system of constitutional guarantees, some activities may be made the subject of criminal law and prohibited. Others clearly may not. Yet the standards which were followed by the State Department and are now proposed to be enacted, seem to have completely disregarded this essential factor.

I believe that a policy consistent with our convictions must predicate any denial of a passport upon evidence of the particular activity which the denial is intended to prevent. While the impending activities of an individual cannot be predicted with mathematical certainty, it is entirely feasible to establish reasonable grounds on which to believe that a person is going abroad to commit a certain act.

Let us assume that an individual is shown to have had access to important classified material, that he had during recent years been active in the Communist Party; that he has recently been in contact with Red agents in this country; that he has booked passage for Europe—proof beyond reasonable doubt adequate for criminal conviction?

No. But reasonable grounds to believe that he is going abroad to transmit secrets, yes.

Still it is argued that our national security would be jeopardized in those cases which are difficult to prove. I submit that the danger to our national security which would result from travel of most fellow travelers and even most Communists has been vastly exaggerated. It certainly has no relevancy to those who have been unjustifiably denied passports under the broad and unreliable factfinding procedures which have characterized the passport program.

The professional and really effective spies like Colonel Abel obviously do not have to rely upon Miss Frances Knight's good graces to enter or leave the United States. A nation which in the estimation of Adm. Arleigh Burke already has ballistic missile firing submarines; whereas this Nation is working on its first one, certainly has pretty much controlled the nuclear situation; a nation that can launch sputnik and a lunik is capable indeed of providing false papers to its agents.

Further, it is patently ridiculous to believe that vital secrets thus obtained can be retained within the borders of the United States even by denying passports to everyone who wears or has worn a red carnation.

Iron Curtain diplomats come and go freely. Diplomatic pouches are sent back and forth from Washington to Moscow without interference or search. Americans—and this is well to recall—who are denied passports may still travel to a number of countries in the Western Hemisphere without passports and there readily meet Red couriers or officials or spies of the Red government.

What then do we accomplish by restrictive legislation of the kind that is generally being proposed? In the main we deny exit to people who because of current attitudes or past associations may provide favorable propaganda abroad for the Soviet Union. Again, I say this is patently unrealistic. Communist sympathizers need not leave the United States to accomplish a propaganda purpose. Tape recordings and films made here and transported abroad; statements made here which are reported abroad; releases to the foreign Communist press are all available and effective means of communication.

How much greater is the propaganda value when there is appended a brief editorial comment that the writer has been confined within the United States because of his disagreement with the official attitude of the U.S. Government? For then we have an indictment of the United States, not by the misrepresentations of some fellow traveler, but more damningly by the repressive action of the U.S. Government itself.

Considered in the context of our commitment, our commitment to a program of free travel as announced by the President, and our condemnation of the Russians for prohibiting travel by those who disagree with the Marxist line, the effect on our international stature of restrictions of this kind can only be injurious. Our "security slip" is showing.

A graphic illustration of what I am talking about is the Paul Robeson case. As long as he could not get a passport, Robeson's restrictions made good propaganda. Since he has gotten his passport, the Reds have lost an effective argument which appealed to millions around the world. Robeson has been abroad since last summer. During that time he made a concert appearance in Moscow, in which he exhibited warm friendship for the Soviet Union and called upon the Russian

people to fight for freedom. What freedom, or whose, he did not specify.

Has the strength of this Nation so deteriorated that we feel threatened by a performance of this sort?

Another example of how foolish we have made ourselves appear to the rest of the world, and for no good reason, is the Arthur Miller case. In 1954, this Pulitzer Prize winner, author of "Death of a Salesman," was not allowed to go to Brussels to see a performance of his own play, "The Crucible." Finally, in June 1955, the U.S. Court of Appeals for the District of Columbia upset the State Department's denial of a passport because it was based on insufficient reasons. Mr. Miller subsequently went to Europe, and the foundations of the Republic have not crumbled. Actions like this have brought us uncomfortably close to what the free world found so outrageous in the Russian treatment of Boris Pasternak.

I do not say that the right to travel is absolute, that no limitations can be justified. Clearly, in time of war, the President should and must be free to issue almost any travel regulation he considers necessary. But what about periods when the President or Congress has determined that, although we are not at war, the Nation is nevertheless beset by great dangers—a period of national emergency?

If this committee deems that legislation is necessary, then I think that the interests of national security and individual freedom can be best accommodated by legislation which would permit the denial of a passport in periods of national emergency when the Secretary of State finds reasonable grounds to believe that the applicant will commit either of the following acts.

I have emphasized "acts" in contradistinction to "beliefs."

1. Transmit secrets affecting the national security.
2. Incite attacks by force upon the United States or attempt to overthrow its Government by force and violence.

These acts are punishable as crimes if committed within the jurisdiction of the United States. It would seem that society should have the right to protect itself from acts against it abroad, if it has the right to protect itself from the same acts committed within its jurisdiction.

I would therefore support legislation authorizing these acts as grounds for denial of passport, provided the proper procedural safeguards are incorporated in the legislation. As I said a moment ago, I believe the bill offered by the distinguished member from Ohio, Mr. Hays, comes closer to accomplishing this than any of the other bills before this committee. However, even it does not provide for confrontation and cross-examination.

Because of the significance of the right at stake, a passport should not be denied without a full trial-type administrative hearing. The applicant should be given prompt notice of any tentative denial of his application, the notice should inform him of the reasons for denial in sufficient detail that he can explain or refute them. He must have a hearing before an impartial tribunal with the right to appear and to be represented by counsel. The Government should be required to present its evidence on the record and to confront the applicant with the witnesses against him.

The administrative board should be required to make a reasonable decision on the record and subject to judicial review.

While the State Department is willing to provide all the other elements of a trial-type hearing, it insists that considerations of

national security often preclude it from (1) explaining the reasons for denial in detail; (2) disclosing certain evidence to the applicant; and (3) confronting the applicant with the witnesses against him.

To do so, argues the Department, would be to reveal vital information about our counterintelligence and espionage systems which would inevitably destroy our sources of information. That there is some merit in this argument cannot be denied. However, balanced against it are the risks of unjustifiably depriving a citizen of his constitutional right to travel. And I repeat, the Supreme Court in *Kent v. Dulles* acknowledged that the right to travel was a constitutional right, and significantly the Solicitor General in that case admitted that that was the case—the Solicitor General, who represented the United States in that appeal.

As any trial lawyer will tell you, the disclosure of evidence and the opportunity to cross-examine witnesses are indispensable to arriving at the truth. Informers make mistakes in identification. They are sometimes maliciously motivated. Investigators have been known to be slipshod in their methods and conclusions. Lies, half-truths, unjustifiable conclusions, which would go unchallenged in secret proceedings, usually break down under the test of effective questioning.

And, furthermore, we have a traditional abhorrence of faceless accusers.

For these reasons, the courts have held that in criminal cases the Government must reveal its evidence and confront a defendant with the witnesses against him, or it must let him go free. While the deprivation of liberty consequent upon a criminal prosecution may be more erroneous, still the deprivation of a particular individual's right to travel may result in serious hardships and indignities. It is a right of sufficient importance so that the risk of its unjust deprivation is far more serious to our way of life than the risk that an occasional enemy may receive official approval to leave the United States.

Up to now I have been discussing restraints upon individuals. There is, however, another facet to the problem, the question of geographical or area restrictions affecting all American travelers. Unlike the issue of individual restraints, the question of the extent of the Secretary's power to impose area restrictions has not been ruled on by the Supreme Court, although this issue was involved in current litigation. It would appear, however, that since the Executive has exclusive power in the field of international relations, the Secretary would have broad discretion in applying area restrictions as an instrument of foreign policy.

This is not to say that what the Secretary can do he has done well or will do wisely. During the past few years, the State Department has seemingly forgotten that in addition to foreign policy, other vital interests are affected when Americans are barred from foreign lands. Among them is the need to know what is going on. Curiosity is not the only thing at stake, although the value of that disappearing virtue is too frequently underestimated. What is ultimately at stake is the vitality of the democratic process in reacting to the issues that confront it. Intelligent decisions by the electorate require facts, not solely as presented in official statements, but as observed by individuals and by trained reporters. The public itches for information concerning places and countries whose rulers may be friendly or unfriendly, and that itch must be satisfied.

I do not say there can be no reason for the imposition of some restrictions. Situations have and will arise where the presence of large numbers of American nationals may substantially increase the likelihood of our involvement in hostilities. In that case a convincing argument can be made for putting the area off limits. But how then do we justify the prohibitions on travel which the State Department imposed on Egypt, Israel, Jordan, and Syria in 1956, 2 days after all parties to the hostilities had formally agreed to a cease-fire? A prohibition which continued until April 1, 1957, a period during which no other country found that the safety of its nationals required such a restriction, and I include Great Britain and France, two of the belligerents.

Were the decision mine, I would have imposed area restrictions only where the presence of American nationals is likely to result either in abuses to them, which would severely embarrass American prestige, or where the presence of our nationals is likely to bring us into armed conflict.

The suggestion of the Association of the Bar of the City of New York that the Secretary of State accompany the imposition of area restrictions with a full statement setting forth the reasons therefor is a desirable advance. The prospect of exposure to critics, whose names do not appear on the routing slips in Foggy Bottom, may produce a less mechanistic application of standards which of necessity leaves much to the judgment of the Secretary of State.

It is only with sadness that I find that the idea of complete freedom of travel cannot now be realized. But just as we must recognize that reality, we must also recognize that we have during the past decade gone too far in abridging that right.

The Supreme Court's decision in the *Rockwell Kent* case has had the effect of generating a widespread reevaluation of our past policies. The challenge and the opportunity for a statesmanlike solution lies with the 86th Congress, and in the initial stages lie with you distinguished gentlemen.

Mr. CARNAHAN. Congressman Celler, we sincerely appreciate your giving us your time. I am sure that your wide experience will aid us in any legislation that we may attempt on this vital issue.

You did have a bill, H.R. 13652, which you introduced in the last session of Congress?

Mr. CELLER. I didn't introduce it this time.

Mr. CARNAHAN. It still represents your thinking of what legislation ought to include?

Mr. CELLER. Not quite. As I indicated in the inception, I am realistic enough to know that the House passed overwhelmingly Mr. Selden's bill, and I am sufficiently schooled in congressional politics to know that sometimes you must bend rather than break. I don't think we could get as much as my bill, and I therefore am willing to yield and to compromise.

Mr. SELDEN. Will the gentleman yield there?

Mr. CARNAHAN. Do you care, Congressman, if the members have a chance to question you briefly?

Mr. CELLER. No, not at all.

Mr. SELDEN. Let me welcome the distinguished chairman of the Judiciary Committee also, and say to him that the bill I introduced this year is identical to the one we passed, after consultation with you

last year, Mr. Celler. It does have in it the words "on the record," which you felt were very necessary before any bill should be passed, and I hope that you will give this measure careful consideration in the event it is reported again by this committee.

Mr. CELLER. I will give it most careful consideration, but this is a new inning and we have to take a fresh look at the problem. I don't think I could go as far as your bill, but I think I might go as far as the Hays bill. I like the Hays bill much better.

Mr. CARNAHAN. Congressman Celler, I have one question: Do you feel legislation dealing with this subject is imperative at this time?

Mr. CELLER. I think so. I think there should be some legislation. This matter of issuance of passports is fraught with so many uncertainties, with so much misrepresentations, that it would be well for us to assume our real responsibility to do something about it.

Do you mean this session?

Mr. CARNAHAN. Do you think that action should be taken as soon as possible?

Mr. CELLER. I think so.

Mr. CARNAHAN. That passport legislation is an important matter that should be dealt with?

Mr. CELLER. It must be settled in the public mind, at least.

Mr. CARNAHAN. Dr. Judd.

Mr. JUDD. Thank you, Mr. Celler. I don't know how you get the time, with all your other activities, to compose these statements that are almost classical in their expressiveness. If you had been an end man or interlocutor in a show you could have kept them entertained with the dialogue—not by slapstick, but by skill and brilliance.

Mr. CELLER. I can say that you surely know how to handle yourself, and you are certainly skillful in the use of words, yourself. You do mighty well.

Mr. JUDD. I get the impression from your statement that you feel that the Supreme Court decision knocking down the practice of the State Department in withholding passports, where it had reasons which satisfied it that there was real danger in allowing the individual to go abroad, didn't give the Communists any particular gain, because they can send so many of their Communists who are aliens in and out that the bans on certain American Communists traveling didn't handicap them greatly.

Now, if that is the case, and if it isn't really important to the Communists to have their present freedom in this field, why would the Daily Worker have called that Supreme Court decision the greatest victory they had achieved—or some other words like that—their greatest victory in many, many years?

Mr. CELLER. I can't account for what the Daily Worker may think about this, much less write about this. In their own strange and mysterious, occult, and bizarre way, they will take advantage of everything they can, or exaggerate matters, misrepresent matters, deal with it in the most Machiavellian fashion—I can't follow them, and I wouldn't believe anybody connected with the Daily Worker, if they put their hands on stacks of Bibles. I wouldn't want to quote them, nor would I want to use them for a proposition or against a proposition.

Mr. JUDD. They exulted repeatedly over the decision, and immediately hundreds, literally, of such persons who hadn't even applied for passports previously—apparently due to knowledge of guilt or afraid

the FBI might have something on them—came out of the cracks and began to apply for passports, and hundreds have been given passports. Why wouldn't they have tried to go abroad before?

Mr. CELLER. I think the avalanche of applications—I don't know that it was an avalanche because I didn't check on the number, but the applications probably rose after the *Rockwell-Kent v. Dulles* decision. It is interesting to reread that decision where the Court said that the key to the problem, as we shall see, is in the manner in which the secretary's discretion was exercised, not in the bare fact that he had discretion.

The right to travel is part of the liberty of which the citizen cannot be deprived without due process of law and the fifth amendment. So much is conceded by the Solicitor General. In Anglo-Saxon law that right was emerging at least as early as the Magna Carta. [It] shows how deeply engaged in our history this freedom of movement is.

As a matter of fact, if there wasn't that freedom of movement, I doubt whether our own colonies would have been settled by the Catholics and the Puritans and the Quakers, who insisted upon free movement. Efforts were made in England all during that period to stop them, but they asserted their right to travel, the right to leave a country. And we profited by that, way back in those early days.

But to continue the decision:

Freedom of movement, across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within a country, may be necessary for livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.

Those are rather bold words of the Supreme Court, and would override the theory that has been announced so frequently and embodied in some of these bills before you, that a man's beliefs, affiliations, and his opinions would be sufficient to bar him.

I make the distinction that speech opinions, and associations, should not bar a man from traveling except where, as Justice Holmes said—"There is a clear and present danger" to our security.

Mr. JUDD. The language of the Selden bill doesn't deal with views and opinion. It says

A person who is a member or former member of or affiliated with the Communist Party, or who knowingly engages or has engaged since 1948 in activities intended to further the international Communist movement.

Mr. CELLER. Let's take that a moment. You say a "member" or even a "former member." Now, how long back? Suppose a man was a member of the Communist Party way back in 1930. He has reformed. He has done everything, all and sundry, to indicate that he is now a good citizen, he has disavowed all Communist connections.

Now, there is no cutoff date here. It goes back indefinitely. What is meant by "affiliation"? Let's toy around with "affiliation"—

Mr. SELDEN. Will the gentleman yield?

Mr. CELLER. Go ahead.

Mr. SELDEN. I was just going to say it goes further. It is limited—

as to whom it is determined that his or her activities or presence abroad would under the findings made in section 5, be harmful to the security of the United States.

Therefore, a former Communist would not necessarily fall into that category.

Mr. CELLER. I read your bill somewhat differently. It seems to me that the "as to whom" qualification applies only to the second category—those who have engaged in certain activities since 1948. Now about the word "affiliate". Does that mean that if I sell newsprint to the Daily Worker, I am affiliated with the Daily Worker?

Mr. JUDD. I don't think anybody would determine on the basis of that "affiliation" that your activities or presence abroad would be harmful to the security of the United States. Without such a determination the person could go. A person who was formerly affiliated with or a member of, or who even served it, and became disillusioned and turned against it, his presence abroad may be very helpful to the United States and not harmful. Therefore, he would have no difficulty in getting a passport.

Mr. CELLER. What about the word in Mr. Selden's—the distinguished gentleman's—bill, "intended"?

Mr. SELDEN. Someone might aid the Communist cause but with no intention of doing so.

Mr. CELLER. That gives the Secretary of State a very, very broad discretion.

Mr. SELDEN. But subject to judicial review, on the record.

Mr. CELLER. On the record, but you don't go into the details or the type of due process.

Mr. SELDEN. The words "on the record" were approved by the gentleman from New York [Mr. Celler].

Mr. CELLER. I remember that.

Mr. JUDD. "Judicial review on the record" is much broader than the language in the Bentley bill, which spells it out in detail, and in spelling it out may have omitted something. "Judicial review on the record" is the whole works. Anything that the fellow's lawyer can think up, and they have good lawyers, is eligible for use under judicial review on the record.

Mr. CARNAHAN. Is it the wish of the committee to proceed under the 5-minute rule?

Mr. JUDD. That is probably the better thing to do.

Mr. CARNAHAN. The time of the gentleman from Minnesota has expired.

If you care to continue your reply, Mr. Celler, you may do so.

Mr. CELLER. With regard to judicial process, I don't know whether under this the Secretary of State, as I used the term before, uses faceless accusers or not. I don't know what he could do here.

Mr. JUDD. The judge would say "I have to have the record."

Mr. CELLER. I am opposed to faceless accusers. His record may not indicate the names of those who are testifying against the applicant. I think there is danger there. In Mr. Hay's bill at least there is some protection to the applicant. I think the Hays bill goes further toward safeguarding our security and at the same time safeguarding the individual's liberty, than do the others. And I fear, Brother Selden, that your bill may not come within the permissible limits of due process.

Mr. CARNAHAN. Mr. Fascell.

Mr. CELLER. Before you came in, brother Judd, I said it seemed rather anomalous that we would allow Khrushchev here, the blood-thirsty leader of the Communist Party, and allow him to see our missile bases. We have allowed Koslov to see a good deal of our nuclear secrets. We allowed Mikoyan to visit a good deal of our installations.

Now, here we have these topnotch Communists who have been or will be received most hospitably—they are Communists, God knows; if there ever were Communists, they are—and yet we don't allow any fellow travelers, or near fellow travelers, whose activities might "tend toward" the furthering of an international Communist movement, to go in to Russia.

I think our security slip is showing a little bit there.

Mr. JUDD. I can't disagree with you on the Khrushchev business and if I may impose upon the chairman—

Mr. CARNAHAN. Mr. FASCELL has the time.

Mr. FASCELL. Go ahead.

Mr. JUDD. Thank you. Mr. Celler, you are chairman of the Judiciary Committee. There is something on which I wish you would enlighten me. I took an oath down in the Chamber, and so did you, to "uphold and defend the Constitution of the United States against all enemies, foreign and domestic." Now we haven't declared this man Khrushchev an enemy, but we don't need it. He has declared himself an enemy of our Constitution.

He says all our grandchildren will live under communism. That can't come about without first destroying the Constitution of the United States. To receive him as almost a friend seems to me to aid and abet a declared enemy of the Constitution of the United States, an enemy against which I took an oath to uphold and defend the Constitution of the United States. I am very unhappy about this.

Mr. CELLER. I am very unhappy, too.

Mr. JUDD. I haven't the responsibility for Khrushchev's visit but I do have responsibility for legislation regarding such enemies.

Mr. FASCELL. This has been a very lucid discussion, and it also presents some very challenging thoughts, which is always healthy. But as I understand it, you are resigned to the fact, whether you like it or not, that the right to travel is a constitutional right and is subject to restriction by the Government. Is that correct?

Mr. CELLER. There is a right to travel and it is a constitutional right.

Sometimes the right to travel clashes with the duty of the Executive to protect our security. When those two rights clash we must try to accommodate them.

Mr. FASCELL. Therefore, you see reasonable restrictions on the right to travel in time of war?

Mr. CELLER. Yes.

Mr. FASCELL. And during an emergency, declaration of an emergency?

Mr. CELLER. Yes.

Mr. FASCELL. And during time of peace?

Mr. CELLER. Some restrictions, yes. I would set them forth somewhat as Mr. Hays sets them forth except that in peace I would not apply the standards in section 103(a) unless there was a declared national emergency and even then only A and C.

Mr. FASCELL. Now, one of your concerns, and a legitimate area of concern is the question of proper and adequate administrative procedure, as distinguished from judicial review; is that correct?

Mr. CELLER. Yes. The Administrative Procedure Act came out of the Judiciary Committee and we spent years of study on that.

Mr. FASCELL. The gentleman has anticipated my next question.

Mr. CELLER. Excuse me.

Mr. FASCELL. No, that is all right. That is very good. Because I would make this observation without attaching any particular emphasis or motive to it. I would much rather see the gentleman's committee attack administrative procedure under the Administrative Procedure Act, which certainly, after 13 years of operation, needs a wholesale review. Then he can put in it whatever the gentleman's committee thinks is necessary in the way of adequate safeguards and procedures, rather than have us, the Congress, piecemeal, by legislative process, whenever we run into an administrative procedure problem, seek to write in each separate bill the administrative procedures by which that particular legislation shall be operable.

I think that is absolutely fantastic. It will only compound the existing problem. So I would much rather say nothing about administrative procedure in this legislation, and deal only with the basic fundamental question as to whether or not you shall have judicial review on the record.

Mr. CELLER. If I remember correctly, a number of your bills exempt all operations regarding passports from the Administrative Procedure Act.

Is that right, Mr. Bentley?

Mr. BENTLEY. That is right.

Mr. CELLER. The Administrative Procedure Act has been chipped off here and chipped off there by special interests, and it is going to be a herculean task to refashion that act. It may take a long time. Meanwhile, we will have inordinate delays before we can have something which is of immediate necessity, as far as passports are concerned.

Mr. FASCELL. Will the gentleman agree with me that if you don't write into this act here, or any act dealing with this legislation, that the administrative procedure which is used would be subject to present Court interpretation, and they require constitutionality of the act, determinations within the four corners of the statute, and whether or not the procedures which have been provided have been properly followed?

Mr. CELLER. Wouldn't we in that case, if we touch upon passports, be poaching on your preserves here?

Mr. FASCELL. Administrative procedure is administrative procedure.

Mr. CELLER. I know, but we always like to see to it that we do not invade the precincts of another committee. I am very careful about that.

Mr. FASCELL. I appreciate the gentleman's concern, and I would only say this: that I offer myself now as a volunteer to assist you and your committee in the herculean task of revising the Administrative Procedures Act, and if the gentleman would assure me that he would start hearings tomorrow morning and drag these agencies down here, I think we could get a few more volunteers.

Mr. CELLER. You don't know what you are in for when you make that suggestion.

Mr. FASCELL. Mr. Chairman, I have one other question, and that is the question of thought policing. I am opposed to thought policing and I am opposed to setting up any kind of thought police anywhere, as far as our country is concerned, and I also concur with the gentleman that we have to have an affirmative and a firm belief in the

positive aspect of our democratic system of Government. We should not be fearful of it if we believe in it.

Nevertheless, I do recognize the fact that there are actions—and we won't define that for the moment—which are detrimental to our best interests and our national security, and the gentleman agrees with that, I know.

Then we get down to the question of what is an overt act, and I will ask a hypothetical question. You may comment on it if you like. Is a speech made by an individual to one or more people, in which the individual making the speech states affirmatively without reservation or equivocation that he believes in the overthrow of the U.S. Government by the force of arms and asks all those who believe like him to state likewise—now, you will notice I said “state likewise”—an overt act detrimental to the interests of the U.S. Government?

Mr. CELLER. I am just giving a sort of horseback opinion, since that is a very difficult question to answer. If the statement stood alone, I don't think that it would be an overt act. It depends upon the context. If he were haranguing a crowd of hungry workers who were armed with guns and he urged them to march on the Capitol which happened to be a block away, I would say that was an overt act.

A classical illustration, of course, is what Holmes gave us: Yelling “fire” in a crowded theater when there was no fire. That is not freedom of speech. That is an overt act, doing that. That develops a clear and present danger. Now, that is the test, and it is of course always difficult to apply a test involving basic values to a factual situation.

Mr. FASCELL. I agree with the gentleman. It calls for great discussion, discretion, and understanding. I would not presume that I have greater discretion or judgment than the gentleman has, nor would I presume the converse, you see.

Mr. CELLER. That is a fair statement. It is rather ambivalent, though, isn't it?

Mr. CARNAHAN. The time of the gentleman has expired. If you care to comment further, you may do so. Otherwise, I will call on Mr. Bentley.

Mr. BENTLEY. Mr. Celler, we are glad to see you here and we all have great respect for your judgment and wisdom in these and many other judicial and legal matters. I am sorry we didn't have the benefit of having copies of your statement, because it is a little difficult to—

Mr. CELLER. I want to apologize. I dashed it off quickly yesterday and was on the floor and didn't have a chance.

Mr. BENTLEY. I will enjoy reading it in the record.

Since I have noted for the first time that you claim coauthorship for the words “on the record” in H.R. 55 and companion bills, I wonder if you would mind telling the committee, Mr. Celler—

Mr. CELLER. I don't claim authorship, but I agreed that it would be an improvement.

Mr. BENTLEY. Since you are familiar with the expression, would you tell the committee just what you construe “on the record” to mean in this respect?

Mr. CELLER. It would mean that the Secretary of State could make a record showing—whatever he wants to show. Whatever he didn't

want to show, he could leave out. I take it if there was some information received from a foreign government he would deem it in the best interests of the Nation not to disclose what that information was, and there would be probably some generalized statement in the record based upon what was disclosed to the Secretary of State by representatives of the foreign government. That is one illustration.

Or he might receive some information from certain individuals and he may see fit not to name those individuals, and the record would not disclose the names of those individuals. And then, of course, there could be no confrontation.

Mr. BENTLEY. Mr. Celler, this, of course, refers to judicial review on the record in the district courts. Now, according to your interpretation, sir, who would have the determination as to whether or not this information be spread upon the record? Would you leave it to the discretion of the Secretary of State or the reviewing judge, or whom?

Mr. CELLER. What the record contains would under H.R. 55 be within the discretion of the Secretary of State. It wouldn't be in the discretion of the judge. He would have to review what the Secretary of State gives him although I suppose the judge could find the record inadequate to sustain denial.

Mr. BENTLEY. You don't believe that the Secretary of State, as some have suggested, should furnish all of the testimony to the judicial reviewing body and then let the judge decide for himself as to what should and should not be made open evidence?

Mr. CELLER. I think that is what the Hays bill intends.

I like that much better but it still does not afford adequate protection to the individual.

Mr. SELDEN. Will the gentleman yield there?

Mr. BENTLEY. Surely.

Mr. SELDEN. But the decision would be based on the record.

Mr. CELLER. Yes; but the Hays bill lays down certain prescribed rules of conduct for the Secretary of State which he must follow in the making of the record. In addition the judge is shown whatever is not disclosed. But as it is now, and with your bill, the Secretary could make the record as he sees fit.

Mr. SELDEN. Under your interpretation of it, the record goes before the court, the open record, and the decision is made on that basis. If there is not enough information, then the passport can be granted under that procedure.

Mr. CELLER. Yes, that is right, but it may be a very erroneous record. The court would have to accept what the record contains. What may appear credible or reasonable on the cold record might be easily refuted by an applicant on confrontation or cross-examination.

Mr. SELDEN. But it could issue the passport on that basis.

Mr. CELLER. It might. The court might say the record is insufficient but it might also accept the record as sufficient when crucial facts are in error.

Mr. BENTLEY. I wondered, Mr. Chairman, if I could ask the witness to comment on this: Mr. Celler, in my bill, which was originally introduced as 7006, and has now been reintroduced as H.R. 8707, there is included an amendment which has been inserted with the concurrence and at the suggestion of the executive branch, regarding the résumé of evidence that is to be furnished the court, and the amendment which

is on the top of page 8 of 8707 says if the court is dissatisfied with the résumé of evidence which is presented to it by the executive branch, that the court may, in its discretion, inspect, in camera, all evidence upon which the résumé of evidence has been based.

Mr. CELLER. That is like the Hays provision. That is a decided improvement but as I said before, it still leaves some due process doubts in my mind.

Mr. BENTLEY. I just wanted to point out that was inserted at the suggestion of the State Department.

Mr. CELLER. That is a very decided improvement.

Mr. BENTLEY. Thank you.

Mr. SELDEN. The same suggestion, I might add, has been made by the State Department to H.R. 55.

Mr. CELLER. Do you approve of that?

Mr. SELDEN. I would not oppose such an amendment but I believe it to be more restrictive than "on the record."

Mr. JUDD. I agree with you.

Mr. CARNAHAN. Mr. O'Hara.

Mr. O'HARA. I was unavoidably detained.

Mr. CELLER. Will you pardon me a moment? Let me again point out the infirmity of even this procedure. The résumé submitted to the judge leaves it to the judge to protect the interests of the individual. The individual wouldn't necessarily know who the accusers are and he wouldn't know whether the people are telling lies or misrepresenting or telling half-truths. He couldn't explain because he couldn't know. The judge could not disclose the résumé to the applicant, and a great injustice could be done.

I just wanted to point that out but this still is a great advance. However, the only way that the individual can fully protect his interest is through confrontation and cross-examination.

Mr. SELDEN. It is my feeling that that language would be more restrictive than "on the record" because the words "on the record" would have the effect of compelling the State Department to disclose sufficient information, or granting the passport.

Mr. CELLER. Are you willing to state that, that the State Department must disclose all the information?

Mr. SELDEN. They would have the choice.

Mr. CELLER. You are not willing to state that, are you?

Mr. SELDEN. If they didn't disclose enough information they would have to give him the passport.

Mr. CELLER. That isn't a choice, that is only an extremity—

Mr. JUDD. I think it is a complete choice. The State Department tries to prevent a passport. On review, it discloses as much as it can. If that evidence is enough for the judge, he withholds the passport. If it is not enough, he orders the passport granted. You can't require the State Department or any other person to reveal everything. If the Secretary is willing to lose a decision rather than have the judge review everything, then he loses his decision.

It is judged on the record submitted; that is all.

Mr. CELLER. That is not enough. The individual should be given the opportunity to challenge the evidence against him and if the State Department doesn't want to reveal the evidence, it should grant the passport.

Mr. CARNAHAN. Mr. O'Hara—

Mr. O'HARA. I very much regret I was detained this morning. I looked forward to Chairman Celler's testimony, and I shall read it in the record with interest. Do I understand the chairman endorses any one of these bills?

Mr. CELLER. I am inclined to endorse the Hays bill with a number of modifications. I think the standards in section 103(a)(3) of that bill should be limited to periods of national emergency. As to procedures, I think there should be a trial-type hearing rather than relying on the judge alone.

Mr. O'HARA. Does the gentleman believe that legislation in this field is necessary now?

Mr. CELLER. As I indicated before, there is so much confusion concerning the issuance of passports, that the people of the Nation want the matter resolved, and I think this Congress might be deemed derelict unless it did resolve it.

Mr. O'HARA. I have a very strong feeling on this, stemming from an experience I had a few years ago. One of our most distinguished scientists, a man whose loyalty to this Nation has never been questioned, was in Europe and he had lunch several times, I think, with scientists, and some of them probably were Communists, just as the Vice President met Communists when he went to Poland and to Russia. And the State Department was not going to issue a passport the following year. We had to wait 2 or 3 months before we got a passport for this great scientist. Merely because going over there as a scientist and having met—as the Vice President met in Russia and Poland—some scientists who were Communists, our State Department arbitrarily said he had forfeited his right to have a passport.

I would be very reluctant to endorse any legislation that would give the Secretary of State the right to deny a passport to any American on evidence that he didn't disclose. I think that is placing too much power in the hands of the individual.

Now, did I understand the chairman to say that there was some information the State Department could not make public or could not inform the applicant for the passport about?

Mr. CELLER. My opinion is that even if the State Department receives secret information, say from a foreign government, that would militate against the granting of the application. I would insist upon that information being disclosed. The information may be erroneous and the applicant should have an opportunity to refute it. If the State Department feels that it cannot disclose, it should grant the passport. I doubt whether much harm can result if the passport is granted.

As I indicated in my statement generally, if it is a question of carrying secrets, he doesn't need to go to South America, he doesn't need to go to Europe; he can go to South America and meet a courier there and give the secrets to him and his mission is accomplished.

Whether he goes over there or he stays here, or goes to South America—the same thing could be done if he wants to aid the foreign government.

I also feel, and I want to indicate this, if a man is a Communist I would say give him a passport. If you want to punish Communists, then make membership in the Communist Party a criminal act. We have never done anything about the Communist Party, as such. Legally we look upon the Communist Party as any other party in

this country. We have never made the Communist Party an outlaw in this country.

Now, if membership in that party is perfectly legal in this country, why should a man be denied a passport because he is a member of the Communist Party? He is in a legal organization.

Mr. O'HARA. Then what the Chairman is saying is that we are putting the buggy before the horse. If we want to deny a man a passport because he belongs to the Communist Party, first we must pass a law outlawing the Communist Party.

Mr. CELLER. I believe so.

I say, in the interests of getting something acceptable done, I would yield to Mr. Hays' bill provided certain important amendments, which I have discussed, are made to it.

Mr. O'HARA. Under the Hays bill everything must be made known to the public. The applicant has a chance to answer any charge?

Mr. CELLER. There are some restrictions in the Hays bill. I examined these very hastily last night. There are some restrictions.

In the Hays bill the secret evidence could be explained to the judge in a résumé. He wouldn't have to disclose in detail what that evidence is. The Secretary of State would have some sort of a résumé made and submitted to the judge and the judge would pass on that résumé.

Mr. BENTLEY. Would the gentleman yield right there?

Mr. O'HARA. Yes.

Mr. BENTLEY. In section 307(b) of the Hays bill it says the court receives the entire record. 307(b), page 12. I think that provides for not the résumé, but the entire record to be transmitted to the court.

Mr. CELLER (reading:)

Shall submit to the court the entire record, both open and closed.

Yes, I beg your pardon. That is correct.

Mr. O'HARA. Now, suppose some secret information were given the State Department and suppose that information had come from a government that discriminates against some of our Americans—and we have some governments, as the chairman well knows.

Would that information be held secret by the State Department, or would it be disclosed to the applicant and later to the court on review?

Mr. CELLER. I feel it should be disclosed. It may have the effect of discouraging receiving that kind of information in the future, so I say, what of it? If the Government feels that the information is important enough, then grant the passport. What harm can he do? How many would there be?

Mr. SELDEN. Wouldn't that be the effect of H.R. 55 also? Either they would disclose sufficient information on the record or they would have to grant the passport.

Mr. CELLER. In a certain sense, yes. However, in H.R. 55 the court could accept a record which on its face justified denial but in which there were many mistakes or misrepresentations of fact about the applicant.

Mr. O'HARA. Has the chairman read Mr. Selden's bill?

Mr. CELLER. Yes. I don't like to say it, but I am not in accord with Mr. Selden.

Mr. SELDEN. Have you changed your views since last year in connection with this measure?

Mr. CELLER. Yes. I indicated I wanted to get something done last year, but I am not necessarily inconsistent. As you know, Emerson said, "Foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines."

I don't think I am inconsistent because conditions change.

Mr. CARNAHAN. Thank you so much, Congressman.

Mr. CELLER. Thank you. I am sorry I have taken up so much time.

Mr. JUDD. I would like to ask one question if I may.

I judge you don't think we are in a national emergency now?

Mr. CELLER. May I be political? I don't think our President thinks there is a national emergency. We are brimming with prosperity, our productivity has reached inordinate heights and we have very little unemployment now. I wouldn't call that an emergency, would you?

Mr. JUDD. I am not talking about emergency from our domestic standpoint.

You said that if there was a threat of war and a national emergency was declared, then we would have to take action to restrict the activities and travel of our citizens. But you don't think that in the international field we are already in an emergency?

Mr. CELLER. I don't think there is an emergency although legally the national emergency declared in the Korean war is still in effect. When a situation becomes a permanent part of our lives it ceases to be an emergency. It is a very real problem which we must meet but I don't think we can properly label a long-term affair like the cold war as a continuous emergency.

Mr. JUDD. I think we are in the most serious emergency in our national history.

Mr. CELLER. It all depends upon your viewpoint.

Mr. JUDD. It is a point of view. But if you thought we are in a grave national emergency, you would feel we ought to pass legislation to authorize our State Department to do this, wouldn't you?

Mr. CELLER. If we are in that type of emergency, we have to be very vigilant and careful but we must still protect an individual's liberties.

Mr. JUDD. You say this is part of our heritage, the right to travel. But sometimes you have to restrict that right in order to preserve the heritage.

Your right to travel on the highway is restricted every time you come to a red light. It interferes with your freedom to travel, but you accept it gladly because it is necessary to preserve the heritage that gives you the right to travel with safety.

Mr. CELLER. That is right, but we formulate reasonable standards for highway safety and we act with procedural due process when someone is accused of violating those standards. I ask no more in the field of travel.

Mr. O'HARA. Would the gentleman yield?

Mr. CARNAHAN. Again, we thank the gentleman for his appearance.

Mr. O'HARA. I don't ask the gentleman to answer if he doesn't wish to answer.

Does the gentleman see any danger to your security in the visit here of the Premier of Russia?

Mr. JUDD. I certainly do.

Mr. CELLER. Mr. Chairman, could I put this in the record?

Mr. CARNAHAN. This is an article Congressman Celler has written on passports which he would like to have put in the record at this time.

If there is no objection, the article will be inserted as a part of the record.

(The document referred to follows:)

[Bar Bulletin, New York County Lawyers Association, vol. 16, No. 5, March-April 1959]

YOUR RIGHT TO PASSPORT

In the warm idealism which permeated our post-war efforts to create a better world order, the United States subscribed to the Universal Declaration of Human Rights of 1946. Article 13(2) of that poignantly hopeful statement of man's political aspirations declared simply and forthrightly, "Everyone has the right to leave any country, including his own." For some of the signatory powers, the endorsement of this principle was and is an act of blatant hypocrisy. But for the United States, in the days prior to the strains of the cold war, there was in this commitment nothing that was remarkable or even controversial. As early as the year 1215 our political progenitors had enacted from King John the promise found in chapter 42 of the original Magna Carta that it is to be lawful in peacetime for any person "to leave our kingdom and to return, safe and secure by land and water * * *"

Although this principle was frequently abridged during the medieval struggle between English nationalism and the authority of the Papacy, by the early 17th century those restraints had been repealed. The prerogative of the crown to restrict travel, embodied in the writ of *ne exeat regno*, fell into disuse, and the right to leave England in peacetime to satisfy any whim or fancy came to be taken as much for granted as November fog in London.

Without this heritage of unrestricted exit the settlement of the American colonies would have been substantially impaired if not entirely prevented, for, to a large extent, the American colonists—the Quakers, the Puritans, the Catholics—held views antithetical to the established and the accepted of those days.

For 175 years, the right of Americans to go forth from the United States, in time of peace, was generally unimpaired. Passports were not required to leave the United States, nor did most of the countries of the world require them for entry. It was only when the United States was at war that there was any significant interference with travel. Thus, during the war of 1812, passports were required by statute for travel to enemy lands. During the Civil War, the Department of State, by regulation, required passports of American citizens to enter or leave the United States. During World War I, Congress made it unlawful during time of war or upon a Presidential finding of necessity "for any citizen of the United States to depart from or enter the United States unless he bears a valid passport." This act was revived during World War II and remained in effect until repealed by the Immigration and Nationality Act of 1952 which established a similar restriction upon travel during war or any presidentially proclaimed national emergency.

Although the fighting in World War II ceased over 13 years ago, and although the Korean fighting stopped over 5 years ago, the national emergency of 1950 is still in effect today. Nor does there appear to be any likelihood that the international situation upon which the national emergency is predicated will materially change within the foreseeable future. The result has been and will continue to be that for the first time during any protracted peacetime period American citizens cannot leave the United States (except for travel to some Western Hemisphere countries) without the official permission of their Government as expressed in the issuance of a passport.

But even if we had no such statute, the realities of international travel today demands a passport of every traveler. As a practical matter, international travel is impossible without a valid passport. Of 37 countries canvassed by the Yale Law Journal in 1952, only 5 permitted the entry of foreigners without a passport. The exercise of the right to travel has thus become dependent upon the policies and procedures governing the issuance of passports.

What, then, are those policies and procedures? Until recently the statute of 1856 which gave the Secretary of State authority to issue passports, was generally interpreted by the State Department to vest in the Secretary absolute discretion in the granting of passports. However, over the course of American history the exercise of that power has been rather narrow.

Furthermore, until the First World War, how the Secretary exercised his discretion made very little practical difference since a passport was not required to leave the United States nor did most countries demand one for entry. If, in fact, the Secretary ever had complete discretion over the issuance of passports prior to 1956, the U.S. Court of Appeals for the District of Columbia Circuit, in that year, made it clear that since a passport had become essential to travel it could no longer be subject to the absolute discretion of the Secretary of State. (*Schactman v. Dulles*, 225 F. 2d 938 (D.C. Cir. 1956).)

However, in 1952 the Department issued passport regulations which remained in effect until 1958. Those regulations prohibited the issuance of passports to:

- Members of the Communist Party;
- Persons who engage in, or will probably engage in, activities directed at furthering the Communist movement;

- Those whose activities abroad would violate the laws of the United States or would be prejudicial to the orderly conduct of foreign relations, or would be otherwise prejudicial to the interests of the United States.

It was those regulations, insofar as the Secretary had interpreted them to authorize passport denials on the grounds of beliefs and associations, which the Supreme Court invalidated in the recent case of *Kent v. Dulles*.

In that case, Rockwell Kent applied for a passport to visit England and then to attend a meeting of the World Council of Peace in Helsinki, Finland. The passport was denied on the grounds that (1) Kent was a Communist, and (2) he had a consistent and prolonged adherence to the Communist Party line.

In a momentous decision, Justice Douglas, speaking for the Court, held that it was not the purpose of Congress in the statute authorizing the Secretary of State to issue passports, to give the Secretary authority to withhold passports because of the beliefs and associations of the applicant. The Court reached this decision after first concluding, clearly and firmly, that "the right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law of the fifth amendment."

The decision in *Kent v. Dulles* has thus put the Congress and the Executive on notice that an American's right to travel cannot be touched cavalierly without raising constitutional questions. The immediate reaction in some quarters was "how far does this let us go, constitutionally?" However, as Professor Jaffe has pointed out, "The constitutional approach begs the paramount question for a self-respecting, intelligent government. The question should be not how far we can go without reaching the bounds of outrage, but precisely what our policy should be." (*The Right to Travel: The Passport Problem*, Louis L. Jaffe Foreign Affairs, pp. 17, 22, vol. 35, No. 1 (October 1956).)

Appropriately, the next act in the passport drama will unfold in Congress which, unlike the courts, may consider what should be done as well as what may be done. A preview of what is to come was presented last July when shortly after the decision in the *Kent* case, the President, in somewhat extravagant terms, asked Congress for the immediate passage of legislation which would have permitted the State Department to restrict travel for vague and undefined reasons and without the due process which the President's message said was essential to any abridgment of such a fundamental right. In addition to the administration's proposal, legislation was introduced in the 85th Congress which would have enacted substantially the same criteria for denial of passports as those invalidated by the Supreme Court.

Aside from the grave constitutional questions which would be raised by such legislation, it is totally undesirable especially in view of our experience with the passport program over the past decade. It is undesirable because of the violence it does to our traditions at home and because of the embarrassment it causes abroad.

Most of the proposals which were presented to Congress would continue the practice of denying a passport act not because of evidence that the applicant was about to commit an act with serious consequences to the national security, but rather on the basis of who are his friends, what he said in the past, and what some minor functionary concludes his beliefs were or are. A disposition to engage in any activity unforeseeable to the United States would be sufficient cause for denial.

However, even among people who are so disposed there may be vital differences in their activities abroad. Some will criticize U.S. policy or praise Soviet policy or attend a "peace conference," others will transmit secrets, and others will in fact do nothing disadvantageous to the United States.

There, obviously, are significant qualitative differences among these activities. Under our system of constitutional guarantees, some activities may be made the

subject of criminal law and prohibited, others clearly may not. Yet the standards which were followed by the State Department and are now proposed to be enacted seem to have completely disregarded this essential factor.

I believe that a policy consistent with our traditions must predicate any denial of a passport upon evidence of the particular activity which the denial is intended to prevent.

However, the security-obsessed argue that the exact nature of future conduct is too speculative, too difficult to establish. We must therefore protect ourselves by denying a passport to any one whose record indicates a likelihood that he may commit some act contrary to the interests of the United States.

While the impending activities of an individual cannot be predicted with mathematical certainty, it is entirely feasible to establish reasonable grounds on which to believe that a person is going abroad to commit a certain act. Let us assume that an individual is shown to have had access to important classified material, that he had during recent years been active in the Communist Party, that he has recently been in contact with Red agents in this country, that he has booked passage for Europe. Proof beyond reasonable doubt adequate for a criminal conviction, no. But reasonable grounds to believe that he is going abroad to transmit secrets, yes.

Still, it is argued that our national security will be jeopardized in those cases which are difficult to prove. I submit that the danger to our national security which would result from the travel of most fellow travelers and even most Communists has been vastly exaggerated. It certainly has no relevance to those who have been unjustifiably denied passports under the broad standards and unreliable fact-finding procedures which have characterized the passport program.

The professional and really effective spies like Colonel Abel obviously do not have to rely on Miss Frances Knight's (Miss Frances G. Knight, Director, Passport Office, Department of State) good graces to enter or leave the United States. A nation that can launch a sputnik and a lunik is capable of providing false papers to its agents.

Furthermore, it is patently ridiculous to believe that vital secrets once obtained can be retained within the borders of the United States even by denying passports to everyone who wears or has worn a red carnation. Iron Curtain diplomats come and go freely. Diplomatic pouches are sent back and forth from Washington to Moscow without interference or search. Americans who are denied passports may still travel to a number of countries in the Western Hemisphere without passports and there meet Red couriers or officials.

What then do we accomplish by restrictive legislation of the kind that is generally being proposed? In the main, we deny exit to people who, because of current attitudes or past associations, may provide favorable propaganda abroad for the Soviet Union. Again, I say this is patently unrealistic. Communist sympathizers need not leave the United States to accomplish a propaganda purpose. Tape recordings and films made here and transported abroad, statements made here which are reported abroad, releases to the foreign Communist press are all available and effective means of communication. And how much greater is the propaganda value when there is appended a brief editorial comment that the writer has been confined within the United States because of his disagreement with the official attitude of the U.S. Government. For them we have an indictment of the United States, met by the misrepresentations of some fellow traveler, but more damningly by the repressive action of the U.S. Government itself. Considered in the context of our commitment to a program of free travel and our condemnation of the Russians for prohibiting travel by those who disagree with the Marxist line, the effect on our international stature of restrictions of this kind can only be most injurious. Our security slip is showing.

A graphic illustration of what I am talking about is the Paul Robeson case. As long as he could not get a passport, Robeson's restriction made good propaganda. Since he has gotten a passport, the "Reds" have lost an effective argument which appealed to millions around the world. Robeson has been abroad since last summer. During that time he made a concert appearance in Moscow in which he exhibited warm friendship for the Soviet Union and called upon the Russian people to fight for freedom. What freedom, or whose, he did not specify.

Has the strength of this Nation so deteriorated that we feel threatened by a performance of this sort?

Another example of how foolish we have made ourselves appear to the rest of the world, and for no good reason, is the Arthur Miller case. In 1954, the Pulitzer Prize winning author of "Death of a Salesman" was not allowed to go to Brussels to see a performance of his own play, "The Crucible." Finally, in June 1955, the U.S. Court of Appeals for the District of Columbia Circuit upset the State Depart-

ment's denial of the passport because it was based on insufficient reasons. Mr. Miller subsequently went to Europe and the foundations of the Republic have not crumbled. Actions like this have brought us uncomfortably close to what the free world found so outrageous in the Russian treatment of Boris Pasternak.

However, let us assume that an American goes abroad and does things which may be of propaganda value to the Russians. Why is this great Nation so paralyzed with mortal terror over the possibility that a handful of malcontents may say the same unpleasant and untrue things about us that the Kremlin already says in 50 languages to all parts of the world every day of the week? Perhaps Communist charges of germ warfare in Korea may sound a trifle more convincing in some quarters when uttered by renegade Americans. I suspect, however, that the Communist propaganda mill can achieve about the same degree of effectiveness without them. In any event, I am convinced that the risks we incur by letting the speechmakers and the propagandists go are far less than the danger to our system of government inherent in the kind of program that would be necessary to keep every Communist and fellow traveler at home.

I do not say that the right to travel is absolute, that no limitations can be justified. Clearly, in time of war, the President should and must be free to issue almost any travel regulation he considers necessary. In peacetime, however, individual liberties must prevail to the greatest possible degree. Yet, even then, a few restrictions are justifiable. The State Department should be authorized to deny passports to persons seeking to escape their lawful obligations. This would include fugitives from justice, draft dodgers, persons under court-restraining orders, and those attempting to evade legal process.

But what about periods when the President or Congress has determined that although we are not at war the Nation is nevertheless beset by great dangers—a period of national emergency? Is the Nation powerless to protect itself from even a "clear and present" danger to its security?

The Special Committee To Study Passport Procedure of the Association of the Bar of the City of New York, under the chairmanship of Fifield Workum, has made an outstanding and constructive contribution in presenting some thoughtful answers to those complex problems. The committee rejected as "defective and inadvisable" the standards for passport denial followed by the State Department. It concluded that "travel ought not to be restricted solely on the basis of membership in any organization, adherence to any unpopular views, or a belief that the applicant will criticize the United States or its foreign policy during his sojourn abroad. Some action hostile to the national security of the United States must be reasonably anticipated in contrast to speech or the holding of opinions" (Special Committee To Study Passport Procedures of the Association of the Bar of the City of New York, "Freedom To Travel," p. 61).

Under the standards proposed by the committee, a passport could be denied only when the Secretary of State finds reasonable grounds to believe that the applicant will commit any of the following acts while abroad:

- (1) Transmit secrets affecting the national security;
- (2) Incite hostilities or conflicts which might involve the United States;
- (3) Incite attacks by force upon the United States or attempt to overthrow its Government by force and violence.

The first and third of these acts are punishable as crimes if committed within the jurisdiction of the United States. It would seem that society should have the right to protect itself from acts against it abroad if it has the right to protect itself from the same acts committed within its jurisdiction.

I have certain reservations about the second act. It is significant only in areas of the world which are in turmoil—areas like the Middle East or southeast Asia. Its purpose is to prevent the John Kaspers of international relations from provoking wars in those areas in which we might become involved. In view of the number of homegrown agitators who appear in all of the potential trouble spots of the world, it is difficult to see what could be added by a few American provocateurs. Furthermore, in those strife-torn lands, the hostile troublemaker will probably be dealt with expeditiously and effectively through local law or expulsion.

I would, therefore, support legislation authorizing the first and third acts as grounds for the denial of passports, provided that proper procedural safeguards are incorporated in the legislation.

While difficulties may arise in categorizing what is advocacy and what is action, this is a distinction with which the courts have long been familiar and which can be administered.

I believe these standards provide a fair resolution of on the one hand, our interest in preserving a cherished right and, on the other, of facing the realities of the cold war.

As acceptable as these standards may be, they are no more than standards. They are not self-enforcing. They are dependent for their appropriate application upon these procedures which our experience has shown minimize the commission of error. "The history of liberty," said Mr. Justice Frankfurter, "has largely been the history of observance of procedural safeguards."

Because of the significance of the right at stake, a passport should not be denied without a full trial-type administrative hearing. The applicant should be given prompt notice of any tentative denial of his application. The notice should inform him of the reasons for denial in sufficient detail that he can explain or refute them. He must have a hearing before an impartial tribunal with a right to appear and to be represented by counsel. The Government should be required to present its evidence on the record and to confront the applicant with the witnesses against him. The administrative board should be required to make a reasoned decision on the record and subject to judicial review.

While the State Department is willing to provide all the other demands of a trial-type hearing, it insists that considerations of national security often preclude it from (1) explaining the reasons for denial in detail, (2) disclosing certain evidence to the applicant and (3) confronting the applicant with the witnesses against him. To do so, argues the Department, would be to reveal vital information about our counterintelligence and espionage systems which would inevitably destroy our sources of information.

That there is some merit to this argument cannot be denied. However, balanced against it are the risks of unjustified depriving a citizen of his constitutional right to travel. As any trial lawyer will tell you, the disclosure of evidence and the opportunity to cross-examine witnesses are indispensable to arriving at the truth. Informers make mistakes in identification. They are sometimes maliciously motivated. Investigators have been known to be slipshod in their methods and conclusions. Lies, half-truths, unjustifiable conclusions which would go unchallenged in secret proceedings, usually break down under the test of effective questioning. For these reasons, the courts have held that in criminal cases the Government must reveal its evidence and confront a defendant with the witnesses against him or it must let him go free.

In civil cases, secret testimony has been permitted in the so-called privilege cases, i.e., where a person is not being deprived of something to which he has a right, e.g., a Government job. However, the Supreme Court has already declared that travel is not a privilege but a right. In other words, it is something which is and has been of very great value to the individual and to our society. While the deprivation of liberty consequent upon a criminal prosecution may be made onerous, still the deprivation of a particular individual's right to travel may result in serious hardships and indignities. It is a right of sufficient importance so that the risk of its unjust deprivation is far more serious to our way of life than the risk that an occasional effective enemy may receive official approval to leave the United States.

Certainly, there are risks involved but that is in the nature of a democracy. There are risks in allowing people to speak freely, in a free press, and in the entire panoply of rights guaranteed to the accused in a criminal proceeding. I do not believe that we are yet ready to pay in unfairness and injustice for what is after all what Dean Acheson called the illusion of complete security.

Up to now I have been discussing restraints upon individuals. There is, however, another facet to the problem. The question of geographical or area restrictions affecting all American travelers.

By making passports invalid for travel in certain countries, the Secretary of State has, during the past decade, frequently prevented Americans from visiting large areas of the world. Red China, Bulgaria, Hungary, Albania, North Korea, North Vietnam, Egypt, Israel, Jordan, and Syria have all at one time or another been placed off limits. Unlike the issue of individual restraints, the question of the extent of the Secretary's power to impose area restrictions has not been judicially determined although this issue is involved in current litigation. It would appear, however, that since the Executive has exclusive power in the field of international relations, the Secretary would have broad discretion in applying area restrictions as an instrument of foreign policy.

This is not to say that what the Secretary can do he has done well or will do wisely. During the past few years, Secretary Dulles has seemingly forgotten that in addition to foreign policy, other vital interests are affected when Americans are barred from foreign lands; among them is the need to know what is going on.

Curiosity is not the only thing at stake, although the value of that disappearing virtue is too frequently underestimated. What is ultimately at stake is the vitality of the democratic process in reacting to the issues which confront it. Intelligent

decisions by the electorate require facts, not solely as presented in official statements, but as observed by individuals and by trained reporters.

I do not say that there can be no reason for the imposition of some restrictions. Situations have arisen and will arise where the presence of large numbers of American nationals may substantially increase the likelihood of our involvement in hostilities. In that case a convincing argument can be made for putting the area off limits. But how, then, do we justify the prohibitions on travel which the State Department imposed on Egypt, Israel, Jordan, and Syria in 1956, 2 days after all parties to the hostilities had formally agreed to a cease-fire; a prohibition which continued until April 1, 1957, a period during which no other country found that the safety of its nationals required such a restriction, and I include Great Britain and France, two of the belligerents.

Similarly, the right of Americans to see for themselves has been denied as to those countries with which we have no diplomatic relations. The theory is that this incapacitates us from protecting our nationals in those countries.

As was pointed out in the Workum report, we have frequently also been unable to protect Americans where we do maintain diplomatic relations. William Oatis' stay in a Prague prison was made no more comfortable by the presence of an American ambassador in the same city. Conversely, American citizens visited Franco Spain prior to our recognition of that regime and suffered no ill treatment.

What we have experienced in the past decade has been a far too extravagant use of the power to impose area restrictions by the Secretary of State. However, I do not believe that that power can be limited by statute. Congress can express its concern, its views, and its hopes as to the policy to be adopted, but the ultimate responsibility rests with the Executive. In this area the Nation must look not to the courts or to the Congress, but to the President for the formulation of wise and realistic standards.

Were the decision mine, I would impose area restrictions only where the presence of American nationals is likely to result either in abuses to them which would severely embarrass American prestige or where the presence of our nationals is likely to bring us into armed conflict.

The suggestion of the Workum report that the Secretary of State "accompany the imposition of area restrictions with a full statement setting forth the reasons therefor" is a desirable advance. The prospect of exposure to critics whose names do not appear on the rerouting slips in Foggy Bottom may produce a less mechanistic application of standards which of necessity leave much to the judgment of the Secretary of State.

When an area has been placed off limits the need to know does not cease. It becomes even greater because of the significant events transpiring there. While the presence of large numbers of Americans may be more likely to involve the United States, the risk is frequently minimized by limiting access to selected groups. Since the granting of exemptions can frequently ameliorate the hardness of area restrictions, each situation should be carefully scrutinized with this in view. Among those exceptions, the highest priority should be given to newsmen, representative of the broadest spectrum of political opinion.

It is only with sadness that I find that the ideal of complete freedom of travel cannot be realized in the present state of international relationships. But just as we must recognize that reality, we must also recognize that we have, during the past decade, gone too far in abridging that right. The Supreme Court's decision in the *Rockwell Kent* case has had the happy effect of generating a widespread reevaluation of our past policies. The challenge and the opportunity for a statesmanlike solution lies with the 86th Congress and the Eisenhower administration.

Mr. CARNAHAN. Our next witness is Mr. William L. Taylor, legislative representative, Americans for Democratic Action. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. CARNAHAN. You may proceed as you wish. Do you have a prepared statement?

Mr. TAYLOR. Yes, I do, sir.

With me this morning is Mr. Edward Hollander who is national director of Americans for Democratic Action. I would like to have him accompany me.

STATEMENT OF WILLIAM L. TAYLOR, LEGISLATIVE REPRESENTATIVE, AMERICANS FOR DEMOCRATIC ACTION

Mr. Chairman and members of the committee, the passport bills pending before your committee have long been a source of concern to the ADA and we would like to express our appreciation for this opportunity to give our views on them.

A little more than a year ago, the Supreme Court in the *Kent* case gave judicial expression to a view that many people had long held—that freedom to travel is embodied in the concept of liberty fundamental to our constitutional system. In doing so, the Court wrote at least a temporary finish to a decade of unlawful activity by the State Department in curtailing the right to travel. It also put an end to unwarranted Government interference with freedoms of speech and association. We think it not unfair to conclude also that the Court struck a blow for the intelligent conduct of our foreign relations and for national security. For the era in which a world-renowned scientist like Linus Pauling and a great playwright like Arthur Miller could be refused the right to travel brought only shame and ridicule to the image of this country abroad.

The administration claims, however, that the interests of national security urgently require the enactment of legislation restricting the right to travel. On August 5, 1959, and in subsequent hearings, this committee afforded to representatives of the State Department and the administration another opportunity to substantiate these claims. In our view, the administration witnesses failed completely in their attempt to make a case for the passage of H.R. 7006 or any other legislation which would provide the State Department with additional grounds upon which to base the denial of a passport.

The administration has claimed that passport controls are necessary in the interest of national security to prevent communication between members of the Communist conspiracy. But it has never cited a single instance to show that our security has been enhanced by the exercise of passport controls. Nor has it been able to point to a single case indicating that the removal of passport controls after the Kent and Briehl cases has resulted in damage to national security.

Administration witnesses argued that the activities and identity of members of the Communist conspiracy are so secret that it cannot and should not be required to make a showing of specific harm in order to secure the passage of legislation. Since it is so difficult to identify agents and missions, it is reasoned that blanket controls are necessary to prohibit travel to anyone whose past activities, associations, or expressions of belief might indicate that they would be likely to engage in illegal acts.

The argument proves too much. If secrecy is at a premium, it is clearly unlikely that an agent will be employed who would be identifiable even by his past affiliations and activities. If the Government's contention were valid, the only way to achieve security would be to prohibit everyone from traveling.

Moreover, by its own admission, the State Department could not prevent the transmittal of information abroad, even if it imposed the most stringent controls. The Department acknowledges that travel in the Western Hemisphere does not require a passport and that information could be sent out through Canada and Mexico. Here, it

says, our interest in maintaining good Latin American relations outweighs considerations of national security. Why different considerations apply to our European allies is not indicated. The administration might also have acknowledged that information can be smuggled out through the diplomatic pouch in the Russian Embassy or the various diplomatic pouches of the satellite countries. It might have admitted too that Communist couriers might not take the trouble to obtain a bona fide passport before departing.

The fact of the matter is that illegal transmittal of information abroad is a matter to be handled by our intelligence and counter-espionage agencies. If the Government believed that a person was engaged in carrying illegally obtained information, it would hardly tip him off by denying him a passport; he would either be arrested and prosecuted or watched for purposes of counter-espionage. Furthermore, if denial of a passport is ever thought desirable, existing law authorizes its refusal where the applicant is engaging in illegal conduct.

There is an air of unreality about administration testimony which seeks passport control upon evidence too secret even to specify to a congressional committee. It becomes fantasy when the State Department reveals that it considers its passport office a pivotal point for the prevention of espionage. We believe that the only fair conclusion which can be drawn from the record developed by Congress in the 13 months since the Supreme Court decided the *Kent* case is that there is no need for legislation imposing new passport controls.

The administration also has been less than frank in dealing with the effect of the legislation it seeks upon the rights of American citizens. Seeking to minimize the impact of its application of passport restrictions, the Administration says that only 15 persons were finally denied passports in the 6 years before the Supreme Court decided the *Kent* case. In doing this, the administration chooses to ignore the hundreds and perhaps thousands of cases in which applicants were effectively denied passports because delay inherent in the administrative obstacle-race made it impossible for them to carry out their missions abroad or because they refused to comply with illegal affidavit requirements.

The administration asserts that it seeks under H.R. 7006 only to prevent the travel of persons "presently engaged in activities knowingly intended to further the purposes of the Communist movement." But it admits that under section 2(b) of H.R. 7006 past activities and associations would constitute evidence upon which such a determination could be based. The authorization to deny passports upon the basis of such vague criteria as "* * * facts which reasonably warrant the conclusion that the person is going * * * abroad to conduct activities for the purpose of furthering the interests of the international Communist movement," when coupled with provisions placing the burden upon the applicant to disprove such a purpose, clearly sanctions a return to a system where travel was denied on loose and ill-defined charges.

Apparently untroubled by any thoughts of consistency, the administration admits that Communist agents would not hesitate to lie about their identities and missions, and then urges the use of a non-Communist affidavit, not as a test oath, but as a means for testing potential espionage agents. Such an oath is prescribed in section 3 of H.R. 7006.

The administration seeks authority not simply to refuse to reveal the identity of regularly established agents, but even the names of casual informants, neighborhood gossips and talebearers. It admits that this use of secret information to deny passports deprive the applicant of any opportunity to know what the charges against him are or to rebut them, but says that the personal attention of the Secretary of State to each individual case affords sufficient protection. Assuming the desirability of having the Secretary of State devote his valuable time to review of individual passport cases, case by case, this personal review has not presented injustice and hardship in the past.

Here again the administration has failed to document a need which would justify the abandonment of traditional safeguards of due process. Even if a need were ever to arise to deny a passport on the basis of statements furnished by a secret informer, there is no reason why the statements could not be used to develop independent evidence or, if this was not possible and the denial was important enough, the informer could be identified as he is in criminal cases. Here I would like to say a word about the discussion of this morning: Provisions for reviewing evidence supplied by secret informants. I don't think it meets the problem to say that when you get into court, information can be disclosed in camera to the judges because what we are seeking here is a fair determination of passport cases before they ever get to the judiciary. It sometimes takes years before they reach the judiciary. And even when you are in the courts I don't think that these provisions are adequate to protect the individual's rights to confrontation and cross-examination. He never sees the specific information; he never knows the name of his informer and he can never cross-examine him. It is perfectly conceivable when you talk about disclosing information which may form the basis for a determination, that the information will be given to the judge without the name of the informer. Now, that may be the record that the Secretary of State certifies to the court.

Where that kind of a record is certified, unless you have provisions for disclosure of the name of the informant, there may be in the judgment of the court adequate evidence for a determination but there still will not be a right to cross-examination or confrontation.

It was bad enough for the administration to use secret informants to deny the valuable right to travel before the Supreme Court had spoken on this subject. But only a few weeks ago, in the *Greene* case, five justices made crystal clear their belief that a valuable right or privilege may not be denied without confrontation. The continued adherence of the State Department to its adamant position on secret informants in the teeth of this clearly expressed opinion of the Supreme Court can only be described as reckless unconcern for the Bill of Rights. We cannot believe that the Attorney General would support any such disregard of the Court and of the Bill of Rights.

ADA believes that no passport should be withheld, revoked or refused without affording the applicant full notice and a fair hearing including the right to confrontation and cross-examination. The grounds for denial of a passport should be limited to those now sanctioned by law—that the applicant is not a citizen or is engaged in conduct which would violate the laws of the United States. Attempts to go beyond this, we believe, would be unnecessary, unwise, and in some cases unconstitutional. For these reasons, we oppose provisions

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in H.R. 55, 2468, 5455, 8329 and other bills, which would enlarge the grounds for withholding passports, authorize inquiries into beliefs and associations, require the execution of non-Communist affidavits, and deny the right to confront and cross-examine one's accusers. We recognize that the provisions of different bills differ and that some, like H.R. 8329, attempt to offer some protection to constitutional rights, but all are objectionable to us in one or more of the ways specified.

It might have been expected that if the administration showed no regard for the basic rights of individuals, it would at least have been concerned with the image of the United States created abroad by the imposition of passport controls. Unhappily, it exhibits no reluctance to recreate the picture of an America frightened by the travel of its Communists or fellow travelers.

The members of this committee have demonstrated greater sensitivity in both areas. We feel sure that no action to curtail the right to travel will be taken without some proof of need. None has been forthcoming.

Mr. CARNAHAN. If there are those who have questions to ask, I will recognize anybody who has a question.

Mr. SELDEN. I gather from your statement that you are opposed to any passport legislation. Is that correct?

Mr. TAYLOR. We are opposed to all of the legislation which is before this committee at this time. We don't feel there is a necessity for it.

Mr. SELDEN. You indicated in your statement that you felt that the ground for denial of a passport should be limited to those now sanctioned by law. Therefore, in effect you are opposed to any further legislation in this connection?

Mr. TAYLOR. That is correct, Mr. Selden. I am not saying by that that Congress could not usefully pass legislation which would declare the right to travel and codify the existing grounds for denial of passports in a manner which we think would not invade the liberties of individuals, but I don't think that any of the bills before this committee at this time meet that standard.

Mr. SELDEN. Well, certainly I respect your views, although I disagree with you. I believe that some of these bills do protect the rights of the individual, although they do deny the passports under certain conditions.

That is all.

Mr. CARNAHAN. Mr. Fulton.

Mr. FULTON. I agree with parts of your statement and disagree with others. I agree with you where you base your concept on the fact that the freedom to travel is part of our basic liberties contained in our U.S. Constitution and our basic constitutional system. It is no privilege of the Executive, but is inherent in the individual.

Mr. TAYLOR. Yes, sir; we think that is clear.

Mr. FULTON. I agree with you on that basis. However, in all humility and with certain patience, I would disagree strongly with this statement: "For the era in which a world-renowned scientist like Linus Pauling and a great playwright like Arthur Miller could be refused the right to travel brought only shame and ridicule to the image of this country abroad."

Now, my comment on that is this: I don't know whether there is a right to travel, to go abroad to make a fool of yourself. If that is inherent in the right to travel, Linus Pauling is taking full advantage of the right and there is no room left in the right for anybody else.

Secondly, if he is acting abroad as a world-renowned scientist, I am sure that other people who call themselves simply scientists are going to be a little dismayed about the appellation. As a matter of fact, Linus Pauling, to me, abroad, sounds as much like the voice of the vacuum that I have ever heard speechifying in far parts. His instability as to political statements that are extreme, and secondly, not very sensible, are his own rights abroad. But I am sure I would not want it to be felt by anybody in this country or abroad, even behind the Iron Curtain, that Linus Pauling in his travels is in any respect the image of this country abroad, because he is in no respect as a private citizen abroad reflecting the image of the United States of America.

In your statement I think you have gone just a little far. On this playwright, Arthur Miller, he is no more a great playwright than anybody sitting at this committee table. He is a successful operator. He is a play carpenter who makes money at it, but I might say as far as thought is concerned, where the other one is operating as the voice of a vacuum, this man Arthur Miller is completely vacuous. Let me again say he is no more the image of America abroad than you think Shakespeare is.

That is all.

Mr. TAYLOR. Mr. Fulton, if I might comment on that——

Mr. FULTON. Why would you come in here and say those two men make the image of the United States abroad?

Mr. TAYLOR. I don't think I said that.

Mr. FULTON. That our U.S. Government administrative people have brought shame and ridicule on the image of this country abroad. Neither of those people are the image of this country abroad. I just think a little less of your otherwise thoughtful statement because you said it.

Mr. TAYLOR. I didn't intend to suggest that they reflect the image of America abroad——

Mr. FULTON. Then we are in agreement. They certainly don't to me.

Mr. TAYLOR. What I intended to suggest by this statement was that the denial of their right to travel was a reflection upon our image abroad, regardless of what their views might have been or what one might think about their abilities as scientists or playwrights. I don't think it would be useful——

Mr. FULTON. Linus Pauling, as a special emissary of the committee for a sane nuclear policy, is no more having any effect abroad than he has at home.

Mr. TAYLOR. I would say this: I would take issue with what I thought you implied and that was that there is no right to make a fool of oneself either here or abroad. I think that the right of free speech and the right of travel very definitely implies the right to make a fool of oneself.

Mr. FULTON. I thoroughly agree and I said Linus Pauling has used that right to the full.

Mr. TAYLOR. I don't think it would be useful for us to——

Mr. FULTON. I just wanted to make sure that this whole committee table doesn't expect the statement that Linus Pauling is acting a world-renowned scientist abroad to be anything but extreme.

Mr. JUDD. I had a note on that same subject but wasn't going to bring it up. It isn't a question of the competence of a man in a given field. It is whether or not he is on our side in this world struggle.

I got a letter from somebody the other day about our art exhibit in Moscow. He said we should send art that is determined by artists. I said no, it depends upon the artists. We have no business using the taxpayers' money to put an exhibit in Moscow except as part of our effort to make some headway in a world struggle and therefore I want artists who are on our side and use art to reflect the spirit of freedom, not to destroy that spirit, as Communist artists must.

He said, "You wouldn't want your appendix taken out by a fellow who isn't a good surgeon."

I wrote back and said, "That is right, but I also want him to be a surgeon who is interested in getting me well and not one interested in killing me."

Benedict Arnold was a first-rate general but that didn't qualify him to direct our armies after he went over to the enemy.

Just saying that they are great artists, scientists, or musicians doesn't prove that therefore they ought to be in a position to help create the image abroad of America.

May I ask this question: Do you think that the imposition of passport controls would injure the American image abroad?

Mr. TAYLOR. Do I think the imposition of passport controls—

Mr. JUDD. Yes.

Mr. TAYLOR. I think it has and I think the reimposition of passport controls would injure the image of America abroad.

Mr. JUDD. With whom?

Mr. TAYLOR. Both with our allies and with nations we do not consider our military allies necessarily, but with whom we maintain friendly relationships.

Mr. JUDD. Maybe a lot of them would begin to think that at last the United States is beginning to grow up and pay attention to the menace within itself.

A lot of them would think more of us for imposing such passport controls.

Mr. TAYLOR. I don't know that there is such a substantial view abroad. I do feel that we lost a great deal and the Communists were able to make great propaganda out of our denying the right to travel to citizens of the United States.

Mr. JUDD. I would like to see the evidence upon which that is based.

You can find both positions—there is no question about that. You can find both positions on every subject, but the net result among those who are standing up to the Communist threat would, I believe, be great encouragement if we show them that we are also being more firm and alert to the threat.

My last question: I judge from your statement, that since we could write no legislation that would prevent all Communists or agents, or dangerous couriers from traveling, therefore we shouldn't try to do anything because we can't do everything.

Mr. TAYLOR. If I may make one comment on the question you asked before, I would say that one measure of how countries abroad

react to the imposition of passport controls might be found in their own practices with respect to passport controls and I think you will find in most cases that they conform to what we do right now and not to what we did several years ago.

Now, on this question, I would not say that you don't need legislation, because you can't accomplish everything that you want to do, but my feeling about this legislation is that you accomplish nothing except invasion of freedoms. Passport control is not at all an effective instrument for trapping persons who might be engaged in the transmission of illegally obtained information. And I don't think that you make a little advance by imposing this legislation, that you enable yourself to find some of the people who were transmitting information illegally. What you do is to cast a big net and prevent a great many persons from traveling.

Mr. JUDD. This is designed to put some restraint on people we know or have reason to believe are engaged in activities hostile to our country and furthering the Communist conspiracy against our country.

Mr. TAYLOR. My suggestion is that there are other means to deal with people who we believe are engaged in illegal activities. It is a matter for our intelligence agencies and—

Mr. JUDD. It is on the basis of what our intelligence agencies have turned up that we want to restrain their travel. That is the whole point. J. Edgar Hoover insists it is the Federal Bureau of Investigation only, and not a Federal bureau of action. Somebody has to take some action and make some decisions. We are the ones to take some action on the intelligence those agencies are able to develop.

I don't want to turn over to the investigative agencies the power to act. Then we have a secret police.

I want the investigative agencies to investigate and then our regular agencies be given authority to act on the intelligence furnished them which seems to us to have been very reliable.

Thank you, Mr. Chairman.

Mr. FULTON. Would you yield for one further comment?

Mr. JUDD. I am through.

Mr. FULTON. The question comes up on the last page, page 3 of your statement, you say—

The members of this committee have demonstrated greater sensitivity in both areas. We feel sure that no action to curtail the right to travel will be taken without some proof of need. None has been forthcoming.

Do you mean to say by that statement that there is no proof whatever that there are agents going abroad from this country as activists when you have said in your last sentence, "None has been forthcoming?"

Mr. TAYLOR. No, sir, I did not mean to say that at all. What I meant to say was that there is no proof that passport controls can be used as an effective instrument for preventing agents from coming and going abroad, or from information going and coming.

There is no proof that passport controls in the past have enhanced our security in any way or that the Supreme Court's decision has changed matters at all and allowed people to go abroad who were not going abroad before with secret information.

Mr. FULTON. We must distinguish then in our use of words. Such as "control of passports," and "curtailing the right to travel" from the words which mean blocking or preventing.

In your last paragraph you used the word "curtail" the right to travel. Now, that means cut down on the limits of the right. It does not mean "block."

Are you making a distinction in your philosophy on this question of passports between the actual right to prevent a person from traveling, completely, or curtailing his travel in certain areas that are vital to the security of the United States—or are you speaking only of opposing the right to control the flow, that is, put certain conditions on the right to travel?

What is your concept? I don't quite get it from your statement.

Mr. TAYLOR. I was not speaking of geographical limitations. We did not cover that aspect of it in our statement and I think with the *Worthy* case now pending in the Supreme Court it might be wise to defer for a while judgment on what should be done in this area.

Nor did I mean to suggest limitations on what one can do when one travels. What I was suggesting was that no proof has been forthcoming to show a need for denying the right to travel to certain persons based upon their beliefs, their associations, or upon vague standards like "furthering the purposes of the international Communist movement" which we think are capable of very broad interpretation.

Mr. FULTON. You don't think then that a limit of a cutoff point such as 1948 on the citizen's associations and activities would be productive in distinguishing who should have the right to a U.S. passport and who should not?

Mr. TAYLOR. No, sir, I don't think that that is a meaningful standard.

Mr. FULTON. It has been suggested here that that be one method, that we go back to, say a period which is relatively recent and set the cutoff point, for example, at 1948. But you would disagree with that?

Mr. TAYLOR. I would say the standards should be much stricter. Whether there is evidence of persons engaged in the course of conduct which is illegal—that is the present standard and I think that is the standard that should be maintained.

Mr. FULTON. Would you disagree with the position that possibly on the return of these U.S. citizens from abroad they should be subject to the right of interrogation by the Attorney General or his assigned agency, or Congress, to determine what their activities have been abroad?

That brings up this question: We are therefore acting after the event when certain actions and activities have occurred, rather than before the event when we are preventing the U.S. citizen in good status and without any criminal record from going abroad, when we just suspect his intentions?

Mr. TAYLOR. I would be very wary of that, sir, for this reason: You can impose a restraint by punishment afterward, or by interrogation afterward almost as well as you can by making it a prior restraint.

In other words, if certain speech is punishable, you restrain it even though you don't prevent its publication beforehand.

Mr. FULTON. But this is not an examination for the purpose of a penalty nor for the denial of reentry, nor because it is after the fact of his going abroad, in relation to his being given the passport. But it certainly subjects the returning U.S. citizen to a requirement that he tell the truth of what his activities might be and might have been abroad, or plead the fifth amendment which, of course, shows him up.

Mr. CARNAHAN. May I at this time recognize the gentleman from Illinois?

Mr. FULTON. Could I just have him answer that?

Mr. CARNAHAN. We have another witness.

Mr. FULTON. Could you just answer that?

Mr. TAYLOR. We would be very wary of setting up the State Department or the Passport Office as an agency for investigation to determine what the activities of persons were abroad. Here, again, I think the usual procedure should be followed.

Mr. FULTON. I said the Attorney General.

Mr. TAYLOR. I am sorry.

Again, if the Attorney General had reason to believe a crime had been committed, I think he would follow his ordinary investigative procedures, or if you simply wanted to develop information I think there might be a way for him to develop that information, but I wouldn't recommend this as a blanket procedure for interrogating persons as they come back to this country. I think it should be used only for specific purposes.

Mr. FULTON. Thank you.

Mr. CARNAHAN. Mr. O'Hara.

Mr. O'HARA. Mr. Taylor, I am glad you are here and I think you have made a fine contribution to our deliberations. You have presented some food for thought here and you have very well pointed out the need for caution in what we do, and I think every member of the committee is mindful of that. If it is possible to write a passport bill that will not infringe upon the constitutional rights of our citizens and will not put them in a place where they cannot confront their accusers and all the rest of it, I think the committee would like to have it if it can be done.

I think you have made a contribution.

I might say that last year I went to some length to assure there would be a hearing here before we passed out a bill and I think every member of the committee is glad we did that. This year I think everybody who has wished to testify has had the opportunity. We all feel good about that.

Now, the fact that my good friend from Pennsylvania—and I do not know of any more courageous Congressman than Jim Fulton, and I don't know of any abler Member of the Congress—the fact that he has such a strong personal feeling about two people I know nothing at all about—whether they are good people or bad people, I don't know. I don't know whether this playwright is the greatest playwright who ever lived or just a phony. I don't know. But the fact that my good friend, Jim Fulton, has such a strong feeling would indicate certainly that we must have caution.

Suppose we had a Secretary of State who had that intense feeling toward me. I would find it awfully hard to get a passport, if it were left to his discrimination, and I think, Jim, it might be pretty hard—well, you are fair no matter how you feel, but you are unusual in that respect. You even had the courage to stand up for your conscience last week on the floor of the House.

Mr. JUDD. Do you suggest the rest of us in our voting didn't stand by our consciences?

Mr. O'HARA. I wouldn't say that, but sometimes it is hard for us to understand the other fellow's conscience. Seriously, I might say

that Members of Congress do follow the dictates of their consciences and accord to their colleagues who disagree with them credit for the same sincerity they ask for themselves.

Mr. JUDD. Come over and join us.

Mr. FULTON. You know I would give these people passports but not because they are the image of America abroad. That is the point.

Mr. O'HARA. And on that I might remark that I have in mind it is not the best policy to put any names in because you don't know whether somebody might not like them. It is better to say, "Tom, Dick, and Harry."

Mr. TAYLOR. Thank you, Mr. O'Hara. I am sorry if that particular statement was misinterpreted. I just don't think it would be useful to determine the abilities of Arthur Miller or the validity of his views or whether he is the image of America abroad. I wouldn't contend that any one person or one set of ideas would be the image of America abroad and I think, Mr. Fulton, we are in agreement that we don't deny passports on that basis anyway.

Mr. FULTON. If you had simply mentioned the individuals without such a buildup, I wouldn't have had to do a slight deflating job. That is my position.

Mr. CARNAHAN. Mr. Taylor, we are grateful for your appearance.

We now go to our last witness this morning, one of our own committee members. It will be our privilege to hear you, Congressman Coffin.

STATEMENT OF HON. FRANK M. COFFIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Mr. COFFIN. Thank you, Mr. Chairman.

You will remember that when Mr. Raymond testified with Mr. Hanes, I asked him to submit for the record cases that presented a conflict between a political decision which should be made by the Executive or by Congress and over which the court follows a policy of judicial nonreversal, and cases which involved at the same time an individual right guaranteed by the Constitution which would be adjudicated by the court.

Yesterday I got the galley proof of Mr. Raymond's insert in response to that question and I had a chance to go over it just briefly and I am afraid not with the greatest of legal analysis that I think it deserves.

Now, before I make comments on that, I would like to enter into the record a brief memo that the Library of Congress prepared at my request, on the judicial nonreview of political questions.

I asked the Library to give me substantially the same sort of run-down on cases that involved the policy of judicial nonreview of political questions and the judicial review of constitutional rights.

This memo, I think, is interesting because the cases that the researcher was able to dig up in admittedly a very short period of time did not involve citizens whose individual rights were in question.

We have cases involving the libel of a schooner where a political question was held to be paramount and questions involving aliens, Chinese laborers, a fishing vessel which was seized off Alaska and held forfeit, but nothing that came within the category of individual rights of free speech, freedom of petition, religion or travel.

This indicates to me that we are in an area where there is not too much precedent, where political questions come into conflict with constitutional rights of individuals. This field has not been plowed or harrowed very much.

Now, the memo that Mr. Raymond submitted for the record is interesting because he does cite several lower court cases that are closer to the point and they raise a problem. I would say that my feeling, based on the memo from the Library of Congress, is that this is an area where we should move with caution. The lesson I draw is that we should not abandon the judicial review of passport cases without a strong showing that it should not take place.

Mr. CARNAHAN. Without objection, the memo you have had prepared will be included as a part of the record at this point.

(The document referred to follows:)

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., August 14, 1959.

To: Hon. Frank M. Coffin.

From: American Law Division.

Subject: Judicial nonreview of political questions.

THE DOCTRINE OF POLITICAL QUESTIONS

The doctrine of political questions is a concept of limitations whereby the courts, under our constitutional system, feel that it is not within their province to inquire into the action taken by the "political departments"—Congress and the President—in the exercise of their conceded powers. This commonplace maxim is, however, sometimes given an enlarged application so as to embrace questions as to the existence of facts and even questions of law which the court would normally regard as falling within its jurisdiction. (The Constitution, annotated, S. Doc. 170, 82d Cong., pp. 471-472.) A classification of the major fact categories under which cases involving political questions arise include: (1) Negotiation, violation, and termination of treaties; (2) beginning and end of war; (3) admission and deportation of aliens; (4) jurisdiction over territory; (5) recognition of states, governments, war, and measures short of war; (6) status of Indian tribes; (7) guarantee of republican government.

In addition, allied to the doctrine of political questions yet distinct from it, is the doctrine which underlies those cases which concern the difference between ministerial and discretionary acts, though problems arising under the latter are often included in the general discussions of political questions. (Field, The Doctrine of Political Questions in the Federal Courts, 8 Minn. Law Rev. 485.) These acts generally arise in conjunction within the orbit of administrative law, notably that concerned with aliens. A recent law review article states, critically, it might be added, that aside from the naturalization power in the Constitution, four sources of an implied power over aliens have been suggested: the war power, the foreign commerce power, the treaty power, and sovereignty itself. (Hesse, The Constitutional Status of the Lawfully Admitted Permanent Resident Alien. Pt. I, The Pre-1917 Cases, 68 Yale Law Journal 1578, July 1959.)

INDIVIDUAL CONSTITUTIONAL RIGHTS

The following material covers cases where the issues involved would ordinarily have been considered to be justiciable, except for the fact that a relevant factor involved was denominated a political question and accordingly the court refused to adjudicate the matter.

PROPERTY

Schooner Exchange v. M'Fadden, 7 Cranch. (U.S.) 116 (1812). The petitioner here brought a libel against the schooner when it came into a U.S. port, on the grounds that the ship was his, that it had been seized by Napoleon, and converted into a French war vessel. The court held that although sovereigns have exclusive jurisdiction over all property in their domains, they have consented to some exceptions to this rule. Among the exception was the implied assent to a foreign sovereign's immunities as represented by such foreign sovereign's war vessel so

coming into the former's ports with consent. The court refused to take cognizance of the case, since a political question determined by the Executive was involved.

2. *Foster v. Neilson*, 2 Pet. 253 (1829). This is a leading case. Petitioner here claimed title to some property in a territory of the United States which had formerly belonged to the King of Spain. His title derived ultimately from a grant by the King of Spain. The court stated that the executive department had determined that the King of Spain had ceded the land in question before the date of the grant from which petitioner's claim derived. This was a political determination that the courts could not disturb.

DUE PROCESS

1. *Harisiades v. Shaughnessy* (342 U.S. 580 (1951)). In this instance a lawfully admitted, permanent resident alien, who had been dropped from the Communist Party rolls, was ordered deported on a warrant issued in 1930 but not served until 1946 because of his assumption of various aliases. He (and two others) defended on the basis of the guarantees of free speech in the first amendment, and of lack of procedural due process under the fifth amendment inasmuch as the Administrative Procedure Act was not made applicable to his case. The court affirmed the expulsion order on the grounds, chiefly, that policies regarding aliens were so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.

2. *Chae Chan Ping v. United States* (130 U.S. 581 1881). When Chinese laborers were excluded from the United States by the Act of 1882, reentry certificates were provided those already in the United States. In 1888, even these laborers were prohibited reentry, certificates of identity notwithstanding. It was claimed that this was a deprivation of liberty, equivalent to a violation of substantive due process. The Court refused to adjudicate the matter on the ground that the province of Congress to pass this law was not to be judged by the Court.

PROPERTY RIGHTS

The following two cases had similar facts.

1. *In re Cooper*, 143 U.S. 472 (1891). A fishing vessel, sealing in the Behring Sea off Alaska, was seized and held forfeit by U. S. authorities who claimed that the United States, by the treaty effecting the purchase of Alaska, had assumed the rights of Russia to the whole Behring Sea. There was a treaty under negotiation with Great Britain respecting fishing, sealing, and whaling rights in the Behring Sea, at the time the seizure herein was made. The court refused to adjudicate any rights in the instant case because the treaty, a political question, had not yet been settled by the proper departments.

2. *La Nina*, 75 Fed. Rep. 513 (1896). Here again a vessel was seized and held forfeit for unlawful sealing. Meanwhile the treaty with Great Britain had been concluded limiting the jurisdiction of the United States to the 3-mile limit. The seizure here was made 10 miles out. The court held it unlawful.

Mr. FULTON. What is your cutoff point when you talk about when you do abandon the judicial review?

Mr. COFFIN. I don't have a cutoff point. I think we should have judicial review.

Mr. FULTON. Period?

Mr. COFFIN. Yes.

Now, this brings me to the amendments that I understand the Executive proposed to both Mr. Selden's bill and Mr. Bentley's bill, where if the court is dissatisfied with the résumé, it can inspect in camera the evidence.

I have two questions on this.

No. 1, it seems to me not terribly realistic to present a résumé of the report in the first instance and let the court judge whether the résumé is good.

Frequently in the trial of cases we would love to close the trial at a certain point because the evidence is all good. Then there is no reason to suspect that you haven't got the complete story. If you have got the complete story, what is not revealed at first often throws great doubt on what is initially revealed.

The second point, Mr. Chairman, is that Mr. Raymond's memo cites the *Chicago & Southern Airlines* versus *Waterman Corp.* case as a case which gives to the Executive the complete power to judge whether a citizen air carrier can be prohibited from engaging in foreign air transportation without court review. The court held finally that it had no power of review because this was within the field of the Executive.

Then this decision goes on to say, "nor can courts sit in camera in order to be taken into Executive confidence."

Now, this *Chicago & Southern Airlines* case is not connected with the passport case at all but it is cited by the two cases in the passport field at the circuit court level. The *Briehl* and *Dayton* cases, according to Mr. Raymond's memorandum, cite with approval the language of this *Chicago* case.

Mr. O'HARA. What was that *Chicago* case? What did it say?

Mr. COFFIN. What does it say?

Mr. O'HARA. Yes.

Mr. COFFIN. Well, it has to do with whether the court can review a Presidential order prohibiting a citizen air carrier to engage in foreign air transportation and finally the court, at the top level, decided that it did not have power to review this because, as it said, "the President, both as Commander in Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into Executive confidences."

This case is cited in the two lower court passport cases which are the only cases Mr. Raymond is able to cite to use in this field.

Mr. FASCELL. In the facts of the *Chicago* case, is that a situation where a citizen air carrier applied to the CAB to be certificated to fly from the United States to a foreign country pursuant to an international agreement which required reciprocity, and the CAB denied or approved such application and the President, based upon the record which was submitted to him, either approved or disapproved what the CAB recommended; and if those are the facts, was this all done pursuant to statute passed by Congress which gave the CAB the authority to make such a decision and gave the President the right to override the decision of the CAB?

Mr. COFFIN. Yes, with this further addition: The case came up under a statutory provision that said that any CAB order permitting a carrier to engage in foreign air transportation shall be subject to the approval of the President.

There was another section providing for judicial review of any order of the CAB—

Mr. FASCELL. Exactly, but the court held, did it not—and I have never read the case—that the order of the President, once entered, was not subject to judicial review?

Mr. COFFIN. That is my understanding.

Mr. FULTON. Would you yield further on the language of the decision there?

I believe the decision starts out by making a positive statement and then they add this phrase "nor can the court sit in camera."

Now, when that statement of the court is contained in the clause, "nor," that is an additional comment.

Is that part of the necessary basic decision of the court on the issues, or is it an obiter dicta that the court just added on in a casual way? Because that will have a great effect on whether I would give any weight to that case in this connection.

Mr. COFFIN. I think your point is good and this is one of the major reasons that I wish to present this problem to the committee, because the two passport cases take this and give some weight to it. In the *Dayton* case, after citing this language, and right after this sentence, "nor can the court sit in camera" the district court, sitting on the passport case, continues:

In my opinion the court must accept the reasons advanced by the Secretary of State for not disclosing the source of the confidential information referred to and under the circumstances of this case the manner and use of confidential information accords with both the procedural and substantive due process.

They didn't answer your question, but I think this committee has got to face the problem as to whether the caveat about sitting in camera is dictum or is part of the law of the land because this did come from a Supreme Court decision.

Mr. FULTON. You see, the ban on the disclosure is one thing, and the ability of the court to sit in camera is another.

Mr. COFFIN. I agree.

Mr. FASCELL. Will the gentleman yield at that point?

I think that the case and his analysis raises a more important question and I want to commend the gentleman for making it possible to bring this discussion about before the committee.

The more important question would be whether Congress, by statute, grant the right of court review in attempting to protect the constitutional rights of an individual, in fact can do that, and whether or not actually does so since the cited case seems to say the decision of the Secretary of State, would not be reviewable by any court.

Mr. COFFIN. This, I think, is a very deep problem.

Mr. FULTON. And may I compliment the gentleman on his excellent statement. We are glad to have the witness here.

Mr. FASCELL. Won't you agree that is the primary issue involved?

Mr. COFFIN. I agree.

Mr. Chairman, I have accomplished my purpose, which is to pinpoint the legal problems involved in this very narrow area of what kind of judicial review shall be provided for in passport legislation.

As I say, I feel personally we should have a judicial review of the record.

I feel, secondly, that it is unrealistic to give a court a résumé and then to ask it to take the initiative in getting the rest of the record, the closed record.

But I do feel there are some very serious constitutional questions here that both Mr. Fulton and Mr. Fascell have spotted.

Mr. FULTON. Could we ask you to put the statement from the Library of Congress in the record?

Mr. COFFIN. It is in the record.

Mr. CARNAHAN. Are there further questions?

If not, the committee will stand adjourned, subject to the call of the Chair.

(Whereupon, at 12:35 p.m., the committee was adjourned, to reconvene at the call of the chairman.)

APPENDIX

DEPARTMENT OF STATE,
Washington, April 10, 1959.

HON. THOMAS E. MORGAN,
Chairman, Committee on Foreign Affairs,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request of March 25, 1959, for the comments of the Department of State on nine passport bills, which have been referred to your committee. These bills include H.R. 55 and six others (H.R. 1919, H.R. 5575, H.R. 5948, H.R. 5951, H.R. 5954, and H.R. 5956) which are identical with the language of H.R. 55. Comments on the two remaining bills (H.R. 2468 and H.R. 5455) are being prepared, but, in view of the fact that H.R. 2468 and H.R. 5455 raise certain other issues of a broader scope, the Department will submit its comments on those bills at a later date. The comments which follow are therefore addressed to H.R. 55, which was the first passport bill introduced, and are equally applicable to the other six identical bills.

H.R. 55 is apparently designed to provide legislative authority for a policy which the executive branch followed over a period of many years. As you will recall, the Supreme Court ruled in June 1958 that the Secretary's regulations embodying the Executive policy of denying passports to supporters of the world Communist movement were invalid because of a lack of specific legislative authority. The Department is convinced that the policy is both necessary and correct, and therefore wishes to support legislation which is deemed adequate to achieve the objective.

Promptly after the Supreme Court decision, the administration submitted a draft bill to the 85th Congress, which, if enacted, would have authorized the denial of passports to certain persons who knowingly support the Communist movement. The administration bill, introduced in the House as H.R. 13318, did not confine itself to this problem, however, but represented a substantial revision of existing passport laws and regulations and specified grounds for individual passport denials in addition to those pertaining to Communist activities.

Hearings were held by your committee on the administration bill and other passport bills referred to your committee. As a result of those hearings and of hearings conducted by the Senate Committee on Foreign Relations, it became apparent that a narrower approach was desired by the Congress than was represented by the administration bill. This conclusion was confirmed when your committee by a unanimous vote favorably reported H.R. 13760, which was limited in scope to the denial of passports to members of the Communist Party and other persons engaged in activities in furtherance of the international Communist movement. H.R. 13760 was amended on the floor and, as amended, was passed by the House. That same bill, as amended, was reintroduced in the 86th Congress as H.R. 55, and is the subject of this letter.

The Department still considers that the enactment of legislation along the broader lines of the administration bill introduced in the last Congress would be in the public interest. Nevertheless, the Department agrees that the lack of legislative authority for the denial of passports to supporters of the Communist movement continues to be the most urgent current problem in the passport field.

As the Secretary said in his letter of July 7, 1958, when transmitting the administration's bill to the 85th Congress: "I think there can be no doubt in anyone's mind that we are today engaged for survival in a bitter struggle against the international Communist movement. Congress itself has so concluded in numerous statutory findings and congressional reports. The international Communist movement seeks everywhere to thwart U.S. foreign policy. It seeks on every front to influence foreign governments and peoples against the United States and eventually by every means, including violence, to encircle the United States and subordinate us to its will. The issuance of U.S. passports to supporters of that movement facilitates their travel to and in foreign countries. It clothes them when abroad with all the dignity and protection that our Government

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affords. Surely our Government should be in a position to deny passports to such persons."

These words are just as valid today. Indeed, the prediction made in July 1958 by officers of the Department that such persons would hasten to take advantage of the breach in our defenses by promptly obtaining passports has proved true.

The Department is therefore in general agreement with the principles reflected in H.R. 55 and supports the bill. The Department would like, however, to suggest certain revisions and additions, as set forth in the attachment to this letter. The changes suggested in the attachment are based on experience in the operating of a passport security program and on the Department's familiarity with judicial decisions in this area. These modifications are submitted in the interest of obtaining the most adequate legislation for the desired purpose.

It will be noted from a comparison of the text of H.R. 55 with the Department's suggested language that several of the revisions and additions are minor in nature. No lengthy comment is necessary here in regard to the minor changes. The more important modifications, however, do require explanatory comment.

The Department believes that section 6 of H.R. 55 should be divided into two subsections, (a) and (b), the first to be the authorizing provision which would rest on the congressional findings of the dangers in the use of passports by persons who engage in activities in support of the international Communist movement. Subsection (b) would then specify the evidentiary matters which must be considered in reaching the conclusion that adverse passport action is justified. It will be recalled that the opinion of the Supreme Court in *Kent and Briehl v. Dulles* referred to the necessity of adequate standards in any legislation which might be enacted to delegate this type of authority to the Secretary of State.

Section 7 of H.R. 55 would authorize the Department to require a passport applicant not only to affirm or deny under oath his membership in the Communist Party but also to explain the circumstances of any such membership and to describe any other activities in support of the Communist movement. The Department considers that the scope of the inquiry thus authorized is so sweeping that the provision might not withstand a claim of invalidity for reasons of vagueness. The Department would, therefore, suggest limiting the purpose of the affidavit to membership in the Communist Party.

Section 8 of H.R. 55 raises the whole matter of administrative and judicial review of adverse passport action to determine whether there has been any unconstitutional infringement of the right to leave the United States. It also raises the related question of disclosure of confidential information and of investigative methods and sources.

In the interests of complete protection of the individual's rights to the procedural due process required by the fifth amendment to the Constitution, the Department deems it advisable to have both the administrative and the judicial review proceedings established by statute in as much detail as is feasible. It will be recalled that the administration bill submitted to the last Congress contained certain procedural provisions which had been approved by the Attorney General. The Department suggests that those provisions, with a few technical changes, be incorporated into H.R. 55 in place of present section 8. The attachment to this letter contains as title II the text of provisions which the Department believes would provide the best protection of the individual citizen against any possibility of unconstitutional infringement of his right to leave the United States.

With reference to the complex problem of the use of confidential information, the Department must oppose any provision, such as the present wording of section 8 of H.R. 55, which might require the Secretary to make his determination on a particular passport application only on the basis of information and sources thereof which could be disclosed in open court. If such a requirement were to be included in a law authorizing denial of passports to supporters of the Communist movement, passports would have to be issued to most if not all of the persons against whom the law would be directed, and the entire legislative policy would thus be frustrated. Almost without exception, cases in the Communist area involve confidential information and investigative sources. The Government has a legitimate interest in maintaining investigative sources and methods, as well as security and intelligence relations. There are no practical alternatives, in the operation of a travel control program directed at the proponents of the international Communist movement, to the authority to use confidential information if necessary, when confrontation of all witnesses and full disclosure would impair confidential sources and methods and thereby adversely affect the national security or the conduct of foreign relations.

The provisions regarding use of confidential information which are contained in the attachment to this letter, like the other procedural matters, have been taken

in large measure from the administration bill introduced in the 85th Congress. They represent the considered judgment of the executive branch as to the desirable balance between the procedural protection of the individual citizen's rights and the protection of the national security. It will be noted that the language suggested by the Department goes beyond the present state of the law on the issue of confrontation and full disclosure in passport matters and would require the Department to furnish the passport applicant a fair résumé of whatever confidential information on which it may be necessary to rely in substantiating the denial of the passport. Such a summary would give the passport applicant the data he would need in order to prepare his rebuttal of the evidence tending to bring him within the provisions of the statute without compromising the Government's confidential sources and methods.

I hope the foregoing comments will be of assistance in the committee's consideration of the pending bills. Simply stated, the Department needs legislative authority which will allow the Secretary of State to deny passports to hard core supporters of the international Communist movement. The Department believes that such denials should take place only in accordance with due process of law, and that the authority should be used only against those who knowingly engage in activities in furtherance of the international Communist movement or who are going abroad for the purpose of engaging in such activities and whose travel abroad would constitute an actual danger to the United States. The Department does not seek this statutory authority in order to stifle criticism abroad of this Government or its policies. The Department seeks only the capacity to protect the United States by denying passports to those relatively few hard core, active Communist supporters whose travel abroad actually constitutes a danger to the United States.

Should your committee desire further explanation of any of the foregoing matters, either by letter or orally, the Department will be glad to cooperate to the maximum extent.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary.

A BILL To provide for denial of passports to supporters of the international Communist movement, for review of passport denials, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

TITLE I—DENIAL OF PASSPORTS TO SUPPORTERS OF THE INTERNATIONAL COMMUNIST MOVEMENT

SECTION 1. The Congress finds that the international Communist movement of which the Communist Party of the United States of America is an integral part, seeks everywhere to thwart United States policy, to influence foreign governments and peoples against the United States, and by every means, including force and violence, to weaken the United States and ultimately to bring it under Communist domination; that the activities of the international Communist movement constitute a clear, present and continuing danger to the security of the United States, and seriously impair the conduct of the foreign relations of the United States; that travel by couriers and agents is a major and essential means by which the international Communist movement is promoted and directed; that a United States passport requests other countries not only to permit the holder to pass freely and safely but also to give all lawful aid and protection to the holder and thereby facilitates the travel of such holder to and in foreign countries; and that in view of the history of the use of United States passports by supporters of the international Communist movement to further the purposes of that movement, the issuance of a passport to, or the possession of a passport by, persons described in Section 2 is inimical to the security and to the conduct of the foreign relations of the United States and therefore passports should not be issued to or held by such persons.

Sec. 2. (a) In accordance with the findings in section 1, the Secretary of State is authorized to refuse to issue a passport, or to revoke a passport already issued, to any person as to whom it is determined on substantial grounds that he knowingly engages in activities for the purpose of furthering the international Communist movement, unless such person demonstrates to the Secretary, by clear

and convincing evidence, that his activities abroad would not further the purposes of such movement.

(b) The Secretary shall consider as evidence of activities in furtherance of the international Communist movement, within the meaning of subsection (a):

(i) present membership in the Communist Party or former membership terminated under circumstances which reasonably warrant the conclusion that the person continues to act knowingly in furtherance of the interests and under the discipline of the Communist Party;

(ii) activities under circumstances which reasonably warrant the conclusion that a person, regardless of the formal state of his affiliation with the Communist Party, is knowingly acting under the discipline of the Communist Party, or as a result of the direction, domination or control exercised over him by the international Communist movement;

(iii) other facts which reasonably warrant the conclusion that the person is going or staying abroad to conduct activities for the purpose of furthering the interests of the international Communist movement.

Sec. 3. The Secretary of State may require, as a prerequisite to the issuance, renewal or extension of a passport, that the applicant subscribe to and submit a written statement duly verified by his oath or affirmation as to whether he is or has been within ten years prior to filing his application a member of the Communist Party.

Sec. 4. The provisions of this Title shall continue in effect until the termination of the national emergency established by Presidential Proclamation No. 2914, December 16, 1950, 64 Stat. A 454.

TITLE II—PROCEDURE FOR PASSPORT DENIAL AND REVIEW THEREOF

Sec. 5. Upon application therefor, duly completed, and upon compliance with any requirement under the provisions of Section 3 of Title I of this Act, a passport shall be issued to any person qualified under Section 212 of Title 22 of the United States Code (32 Stat. 386), or the applicant shall be informed in writing of a denial thereof, within ninety days after the receipt of such application. If a passport is denied, revoked or restricted for any reason other than non-citizenship or geographic restrictions of general applicability, the passport applicant or holder shall be informed in writing of the reason, as specifically as is consistent with considerations of national security and foreign relations, and of the right to a hearing before the Passport Hearing Board in accordance with the provisions of this Title. Notice of the denial or revocation of a passport under the terms of Title I of this Act shall specify the paragraph or paragraphs of Section 2(b) of Title I on the basis of which the passport is denied or revoked.

Sec. 6. There shall be established within the Department of State a Passport Hearing Board consisting of three officers of the Department to be designated by the Secretary of State. This Board shall have jurisdiction in all cases wherein a hearing is requested in writing within thirty days after notification of the denial, revocation, or restriction of a passport, for any reason other than non-citizenship or geographical restrictions of general applicability. The Board shall hold a hearing within ninety days after the receipt of the request unless such time limit is extended at the request of the party. The officers who present the case of the Department of State to the Board shall not otherwise participate in the deliberations or recommendations of the Board.

Sec. 7(a). The Secretary shall establish and make public rules which shall accord to the individual in proceedings before the Board the following rights:

- (1) To appear in person and to be represented by counsel;
- (2) To testify in his own behalf, present witnesses and offer other evidence;
- (3) To cross-examine witnesses appearing against him at any hearing at which he or his counsel is present and to examine all other evidence which is made a part of the open record;

(4) To examine a copy of the transcript of the open proceedings or to be furnished a copy upon request.

(b) In order to protect information, sources of information, and investigative methods, disclosure of which would have a substantially adverse effect upon the national security or the conduct of foreign relations, the Board may at any time consider oral or documentary evidence without making such evidence part of the open record. Prior to completion of its proceedings, the Board shall furnish to the individual a résumé of any such evidence, and shall certify that it is a fair résumé. The Board shall take into consideration the individual's inability to challenge information of which he has not been advised in full or in detail or to attack the credibility of sources which have not been disclosed to him.

SEC. 8. Within sixty days after completion of its proceedings, the Board shall make written findings, conclusions, and recommendations, which shall be transmitted with the entire record to the Secretary of State who shall make the final administrative determination. If the recommendation of the Board is adverse to the individual, a copy of the recommendation and of the findings and conclusions which are based upon the open record or upon the résumé of any evidence not made part of the open record, shall be furnished the individual, who may within twenty days following the receipt thereof submit to the Secretary written objections thereto. The Secretary shall base his determination upon the entire record submitted to him by the Board, including all findings and conclusions, and upon any objections submitted by the individual. In appropriate cases, the Secretary may remand a case to the Board for further proceedings. In the event he takes action adverse to the individual, the Secretary shall make appropriate written findings and conclusions.

SEC. 9. The United States District Court for the District of Columbia shall have jurisdiction to review any final determination of the Secretary of State under section 8 of this Act to determine whether there has been compliance with the provisions of this Act and of any regulations issued thereunder. In any such proceedings the court shall have power to determine whether any findings which are stated to be based upon the open record are supported by substantial evidence contained in that record, or, in the case of a résumé of evidence which was not made part of the open record in conformity with section 7(b) of this Act are supported by the résumé of such evidence, duly certified by the Board under said section 7(b).

SEC. 10. The provisions of the Administrative Procedure Act, as amended (5 U.S.C. ch. 19), shall not apply to proceedings under this title.

TITLE III—REGULATIONS

SEC. 11. The Secretary of State is authorized to prescribe regulations to carry out the provisions of this Act.

TITLE IV—SEPARABILITY

SEC. 12. If any provision of this Act is held invalid, the remaining provisions shall not be affected.

TITLE V—EFFECTIVE DATE

SEC. 13. This Act shall take effect immediately upon its enactment.

DEPARTMENT OF STATE,
Washington, May 8, 1959.

HON. THOMAS E. MORGAN,
Chairman, Committee on Foreign Affairs,
House of Representatives.

DEAR MR. CHAIRMAN: I refer to your letter of April 27, 1959, with which you forwarded for the Department's comments copies of H.R. 6537, a bill to provide for the denial of passports to persons knowingly engaged in activities intended to further the international Communist movement.

Examination of H.R. 6537 indicates that it is identical with H.R. 55 and with several other bills which have been referred to your committee.

On March 25, 1959, you requested the comments of this Department on a number of passport bills, including H.R. 55 and bills identical with it. The Department replied on April 10, 1959, furnishing a report on H.R. 55 and identical bills. The comments and suggestions contained in that letter and its enclosure therefore represent the Department's views with regard to H.R. 6537.

Thank you for forwarding copies of H.R. 6537. If there are any further questions, please do not hesitate to communicate with me.

Sincerely yours,

WILLIAM B. MACOMBER, JR.,
Assistant Secretary
(For the Secretary of State).

DEPARTMENT OF STATE,
Washington, June 4, 1959.

HON. THOMAS E. MORGAN,
Chairman, Committee on Foreign Affairs,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request of May 12, 1959, for the comments of the Department of State on H.R. 7006, a bill to provide for denial of passports to supporters of the international Communist movement, for review of passport denials, and for other purposes.

Under date of April 10, 1959, the Department furnished your committee with its views on H.R. 55 pointing out that it still considers the enactment of legislation along the broader lines of the administration bill introduced in the last Congress to be preferable. However, the Department endorsed the general principles reflected in H.R. 55 and supported the bill. In this connection certain revisions and additions were proposed to H.R. 55 which, the Department felt, would more adequately insure that the legislation accomplish the desired purpose.

H.R. 7006 incorporates the suggested revisions and additions proposed by the Department in its comments of April 10 on H.R. 55. Accordingly, the Department strongly supports H.R. 7006 and favors its early enactment into law.

The jeopardy to the national security which is manifest in the unrestricted travel of Communist Party leaders, officials, and avowed members is a matter of deep concern to the Department. It is the Department's strong belief that prompt and adequate legislation in this area is essential to our national interests.

The Department hopes that your committee will see fit to hold hearings on passport legislation at an early date, and would be most anxious to have appropriate representatives testify in support of H.R. 7006 or similar legislation.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary.

DEPARTMENT OF STATE,
Washington, August 4, 1959.

HON. THOMAS E. MORGAN,
Chairman, Committee on Foreign Affairs,
House of Representatives.

DEAR MR. CHAIRMAN: I refer to my letter of April 10, 1959, and its enclosure, in reply to your request of March 25, 1959, for the Department's views on nine passport bills which have been referred to your committee. You will recall that the Department's comments and suggested revisions of April 10 were addressed only to H.R. 55 and to six other identical bills, because the subject matter of those bills was limited to the denial of passports to supporters of the international Communist movement.

The Department has now completed its study of H.R. 2468 and H.R. 5455, the two remaining bills of those listed in your letter of March 25, 1959, and appreciates this opportunity to furnish its comments regarding them.

Certain observations of a general nature, applicable to both bills, may be made first, followed by comments on other important provisions of each of the two bills.

Both H.R. 2468 and H.R. 5455 are apparently intended to authorize the Secretary of State to deny, revoke, or restrict passports applied for or held by certain nationals of the United States. The grounds upon which such action could be taken by the Secretary include, on the one hand, knowing support of the international Communist movement and, on the other hand, other reasons not necessarily related to Communist activities, such as attempts to evade justice and activities prejudicial to the national security.

As stated in my letter to you of April 10, 1959, the Department believes that the lack of legislative authority for the denial of passports to hard-core, active supporters of the Communist movement is the most urgent current problem in the passport field. The Department is therefore in complete agreement with this objective of both H.R. 2468 and H.R. 5455 and firmly supports congressional action directed toward granting such authority to the Secretary.

As in the case of H.R. 55 and the bills similar to it, however, the Department's past experience in the operation of a passport security program and familiarity with judicial decisions in this area have prompted close examination of the provisions of various passport bills relating to the denial to supporters of the interna-

tional Communist movement with special regard for the adequacy of the provisions to accomplish the objective and for their constitutional validity when challenged in court, if enacted.

In commenting on H.R. 55 and companion bills, the Department forwarded to you with its letter of April 10, 1959, the text of a suggested revision of those bills which contains all of the points deemed imperative by the Department to achieve workable and valid legislation authorizing the denial of passports to persons who knowingly engage in activities in support of the Communist movement. Rather than to attempt here to analyze the pertinent provisions of H.R. 2468 and of H.R. 5455 and to rephrase those provisions to meet the requirements mentioned above, I believe it will be more helpful to refer to the attachment to the Department's letter cited above. While there is much in the provisions relating to passport controls on the travel of supporters of the Communist movement in the two bills now under discussion with which the Department is in accord, the detailed language and format of the proposed revision of H.R. 55, previously submitted, represents the Department's position on this aspect of all passport bills pending in your committee.

In my letter to you of June 4, 1959, commenting on H.R. 7006, it was observed that this bill incorporates the suggested revisions and additions proposed by the Department in its comments of April 10 on H.R. 55. The Department strongly supported H.R. 7006 and favored its early enactment into law.

The second principal area of concern common to both H.R. 2468 and H.R. 5455 is that of providing legislative authority for the denial of passports on grounds not necessarily related to activities in support of the Communist conspiracy. Thus, subsection (c) of H.R. 2468 would authorize the Secretary of State to deny, revoke or restrict the passport of any person whose activities abroad would violate the laws of the United States, be prejudicial to the orderly conduct of foreign relations, or otherwise be prejudicial to the interests of the United States. Section 4, subsection (2) to subsection (5) inclusive, of H.R. 5455, taken in conjunction with section 6(b) and section 15(a), would authorize the Secretary of State to deny, revoke or restrict the passport of any citizen whose travel would violate State or Federal laws, aid in evading civil and criminal judicial process or be prejudicial to the national welfare, safety or security.

In this connection, it will be recalled that the Department submitted a draft passport bill to the 85th Congress, introduced in the House of Representatives on July 7, 1958, as H.R. 13318, and referred to your committee. That bill, if enacted, would have specified a number of grounds upon which passports could be denied to individuals, the most comprehensive of which were that an individual's activities or presence abroad or possession of a passport would "(i) be in violation of any law of the United States or of any State or Territory, or any order issued by any court in the United States; (ii) seriously impair the conduct of the foreign relations of the United States; or (iii) be inimical to the security of the United States." These grounds are similar in objective to those contained in the above cited provisions of H.R. 2468 and H.R. 5455 and the Department continues to believe that legislation along these lines is desirable.

It will be recalled, however, that your committee, in unanimously reporting H.R. 13760 favorably to the House, commented in the report thereon (Rept. No. 2684, 85th Cong., 2d sess.) that the administration's bill (H.R. 13318) had not received favorable action because of its broad implications and because of dissatisfaction with certain of its provisions. It is understood, on the basis of the hearings in which the Department's representatives participated, that the unsatisfactory implications and provisions of the administration bill were considered by some members of your committee to be precisely the broad provisions cited above.

Both H.R. 2468 and H.R. 5455 contain language (prejudicial to the orderly conduct of foreign relations or to the interests of the United States, or to the national welfare or security) which would appear to be even somewhat broader in terminology than the similar provisions of the administration bill in the last Congress. The Department would not wish to risk failure of enactment of effective passport legislation applicable to supporters of the international Communist movement because of the presence in the bills of broader language which deals with less urgent legislative problems.

It should be made clear, however, that the Department considers broad legislation such as H.R. 13318 submitted by the administration to the last Congress to be still desirable.

In the event your committee wishes to give further consideration to provisions which would authorize the Secretary by statute to deny passports on certain broad grounds not necessarily related to Communist activity, then the Department suggests the use of the language quoted above as contained in the administration

bill submitted to the 85th Congress, which was drafted jointly by the Department of State and the Department of Justice and has the approval of the Attorney General.

A third objective which is common to both H.R. 2468 and H.R. 5455 is that of prohibiting the travel of U.S. nationals to certain countries or areas when determined to be necessary in the national interest by the President or by the Secretary of State (H.R. 2468, subsec. (e)(2); H.R. 5455, secs. 16 and 17). The Department of State supports this objective because it may be necessary from time to time, in the interest of the conduct of our foreign affairs, to prohibit the travel of citizens generally to certain specified areas. Although the Department believes that it has at present both inherent and statutory authority for this purpose, it would be desirable to have it spelled out specifically by statute.

The Department finds, however, that the provisions of both H.R. 2468 and H.R. 5455 pertinent to this subject would create serious difficulties of administration and enforcement if enacted. For example, although subsection (e)(2) of H.R. 2468 contemplates that the passport shall be the means of controlling travel to particular areas and declares unlawful travel in violation of any restriction contained in the passport, no penalty is provided for wilful violation of area travel controls where no passport is used. Sections 16 and 17 of H.R. 5455 provide for general limitations on travel to particular countries whenever the President makes an appropriate finding that such travel restriction is in the national interest. However, the restriction with reference to any particular area or areas would terminate automatically in 1 year unless renewed by an act of Congress. Conditions in particular areas may well require the continuation of such travel restrictions longer than 1 year and the executive may have information, not readily available to the legislative branch, which especially qualifies him to make such decisions without the possibility of incurring the delays inherent in the legislative process.

In view of the difficulties which would arise if the general travel restriction provisions of either H.R. 2468 or H.R. 5455 were to be enacted, the Department believes that the following language would be more adequate to achieve the objective and suggests that it be substituted for the pertinent provisions of the two bills under discussion:

"Sec. (A). In the event that the Secretary of State makes a determination that the United States Government is unable to provide adequate protection to persons traveling in particular countries or areas, due to the lack of diplomatic relations or due to disturbances within such countries or areas, or that travel of United States nationals to or in such countries or areas would seriously impair the foreign relations or foreign policy of the United States, he may publish such determination and may cause notice thereof to be stamped on each passport thereafter issued, renewed or amended.

"Sec. (B). No United States national shall travel to or in any country or area which has been designated by the Secretary of State in a determination made and published under section (A), except that in the national interest the Secretary may make exceptions to geographical limitations of general applicability for particular categories of persons.

"Sec. (C). Any person who violates the provisions of section (B) shall be guilty of a misdemeanor and upon conviction be punished by imprisonment for a period not exceeding one year or by a fine not exceeding \$1,000, or both."

The foregoing comments and suggestions apply, as already indicated, to the major objectives common to both H.R. 2468 and H.R. 5455. Certain other provisions of H.R. 2468 could possibly be improved by careful revision in order to express the intention more clearly and to meet objections of a legal nature, but the Department has suggested above the language deemed most suitable to achieve the three most important objectives of H.R. 2468, namely, control of the travel of supporters of the Communist movement, denial of passports on foreign relations and national security grounds, and statutory authority for restrictions on general travel by Americans to or in particular areas of the world.

H.R. 5455, however, advances a proposal to which the Department is firmly opposed. This proposal is contained in section 7 of the bill, entitled "Establishment of 'The United States Passport Service,'" which would elevate the Passport Office to the status of a semiautonomous "service" reporting directly to an Under Secretary of State, thereby circumventing the authority of the Deputy Under Secretary for Administration and the Administrator of the Bureau of Security and Consular Affairs.

The Department opposes this proposal because, if enacted, it would prescribe by statute the organization, status and functions of the "Passport Service" and thus deprive the Secretary of State of his discretion to organize his Department

as he deems necessary. Such action is not only contrary to general Governmental practice but would represent a major retreat from sound administrative policy. It is also contrary to the principles laid down by the first Hoover Commission in the following words: "Each Department head should receive from the Congress administrative authority to organize his department and to place him in control of its administration. * * * [T]he Department head should be given authority to determine the organization within his department. * * *" (Recommendations Nos. 18 and 20 of the Report on General Management of the Executive Branch). Several reorganization plans based upon these recommendations have been approved by the Congress.

The Department also opposes section 7 of H.R. 5455 because its enactment would place an additional heavy burden on the Under Secretary and would deprive him of time and energy which should be available for important foreign policy problems. Policy guidance and direction on matters relating to the operation of the passport program is being given to the Passport Office by the Administrator of the Bureau of Security and Consular Affairs in the first instance and by the Deputy Under Secretary for Administration whenever appropriate. The Department believes that this sound organizational pattern should not be changed.

Subsections (b), (c) and (d) of section 7, which would prescribe by legislation the status and functions of the "Passport Service" and its Director, raise serious questions as to the degree of authority which the Secretary or Under Secretary of State would actually have over the Passport Service. For example, passport agents are now appointed under the authority of the Secretary, but subsection (d) would authorize the "Director of the Passport Service" to appoint such agents. It should be borne in mind that, although the Passport Office has done a splendid and effective job in its chief business of servicing the traveling American public, its degree of authority is similar to that of other operating offices within the Department which also provide services to the public and which are not responsible for policy decisions.

Moreover, the Department objects to the provision contained in subsection (e) of section 7, according to which the proposed "United States Passport Service" would be "responsible for the administration of laws and regulations relating to the nationality, protection, documentation, and supervision of international travel of United States citizens and nationals * * *".

First of all, the Department of State has no interest in "supervising" the international travel of Americans and finds the concept both repugnant and impossible to administer if it is intended to mean surveillance of individual American citizens visiting foreign countries. If it is intended to refer to promotional activities relating to American travel abroad, there already exists an Office of International Travel within the Department of Commerce which is charged with precisely that responsibility. The work of the Office of International Travel is of interest and concern to many areas of the Department of State, not merely to the Passport Office, and effective coordination exists between the Department of Commerce and this Department on matters relating to the facilitation of international travel. The Department believes that the monetary and business aspects of international travel are and should remain the sole responsibility of the Department of Commerce. The Department further believes that the present allocation of responsibilities in the field of foreign travel between the Departments of State, Justice, and Commerce is in accordance with their respective areas of jurisdiction and should not be transferred or merged.

Secondly, the diplomatic protection of American citizens abroad is an integral part of the conduct of our foreign relations, for which not merely the Passport Office but the entire Department of State and its Foreign Service establishments are responsible.

Finally the laws and regulations pertaining to the nationality and documentation of American citizens are in very great part the responsibility of the Attorney General and the Commissioner of Immigration and Naturalization. The Department of State would not favor assuming those responsibilities which are properly lodged elsewhere.

In connection with section 7 of H.R. 5455 it should be pointed out that, as a matter of administrative policy, the Department favors vesting in the Secretary of State all authorities and responsibilities now vested by statute in subordinate officers or offices of the Department.

H.R. 5455 (sec. 10, first sentence) also proposes to raise the total of fees for executing a passport application and issuing the passport to \$12, \$2 more than the present fee. Such an increase is not required by the present cost of issuance and would not be in line with the President's policy of facilitating travel or with the

recommendation of Hon. Clarence B. Randall in his "Report on the Facilitation of International Travel."

The Department favors the proposed amendment of 22 U.S. Code, section 217, to extend the maximum period of validity of a passport from 4 years to 5 years (H.R. 5455, sec. 9). H.R. 5455 (sec. 11) would continue the present provision of law requiring the issuance of free passports to seamen. The Department has proposed recently the repeal of the statutory exemption for seamen from the payment of governmental fees (sec. 12 of the act of June 26, 1884.) Accordingly, it is recommended that this provision be omitted from section 11.

It is hoped that the foregoing comments will be of assistance to you and your committee in the consideration you will give to passport bills which have been referred to your committee. If additional comments are desired on any aspect of these or other passport bills, the Department will be glad to comply with your oral or written request.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, JR.,
Assistant Secretary.

DEPARTMENT OF STATE,
Washington, August 4, 1959.

Hon. THOMAS E. MORGAN,
Chairman, Committee on Foreign Affairs,
House of Representatives.

DEAR MR. CHAIRMAN: I refer to your letter of July 30, 1959, requesting the comments of the Department of State on H.R. 8329, a bill to provide standards for the issuance of passports, and for other purposes.

The Department forwarded to your committee on April 10, 1959, its comments concerning H.R. 55 and six other identical bills, expressing general agreement with the principles reflected therein and suggesting certain revisions and additions in the interest of obtaining the most adequate legislation to accomplish the purpose intended. Subsequently, H.R. 7006 was introduced which incorporated the revisions and additions proposed by the Department, and on June 4, 1959, your committee was advised that the Department supported H.R. 7006 and favored its early enactment into law.

The Department has endeavored to make its position clear in the matter of passport legislation. A comprehensive measure along the lines of the administration bill submitted to the 85th Congress (H.R. 13318) is still believed desirable. The most pressing problem, however, is the need for legislation authorizing the Secretary of State, under appropriate procedural guarantees, to deny passports to persons knowingly engaged in activities in furtherance of the international Communist movement. It is statutory authority of this nature which the Supreme Court found lacking in the *Kent-Briehl* and *Dayton* cases. Such authority represents the minimum which the Department feels is essential to counteract the danger to which we are exposed at present as a result of the ability of persons under Communist discipline to travel abroad in furtherance of the international Communist conspiracy. The President emphasized this fact in his communication to the Congress of July 7, 1958. The Department consistently has urged the Congress to take action to fill this statutory gap.

In the opinion of the Department, H.R. 8329 is inadequate in certain essential respects and is also unduly restrictive on the authority of the Secretary of State.

Basically, the Department feels that the grounds of national security enumerated in this bill which would constitute reason for passport denial are inadequate to counter the existing danger.

Section 103 of H.R. 8329 appears to represent an enumeration of the sole grounds for the exercise of authority by the Secretary of State in the issuance of passports to individual U.S. citizens. Such an exclusive enumeration would by omission, in the opinion of the Department, severely restrict the existing authority of the Secretary of State to act on the basis of foreign policy considerations in the passport field. It is significant to note that two recent cases (*Worthy v. Herter* and *Frank v. Herter*), decided by the U.S. Court of Appeals for the District of Columbia, upheld the Secretary of State's power to restrict the geographical validity of a passport on foreign policy grounds. The Department is firmly convinced that any comprehensive passport legislation must preserve the Secretary of State's authority to act, in the consideration of individual passport cases, on the basis of reasonably anticipated harm to the foreign relations of the United States.

Section 103(a)(3) of H.R. 8329 enumerates three grounds on which travel may be restrained and passports denied as being dangerous to the national security. The Department subscribes to the validity of these grounds, but believes that the exclusion of all other grounds would leave the national security inadequately protected. The Department seriously doubts that even dedicated, hard-core Communists could be refused passports under the provisions of section 103(a)(3). An advance showing that a particular Communist would, when abroad, engage in one of the narrowly defined activities endangering the national security, would be impossible in almost every case. The conspiratorial nature of the Communist movement, its clandestine operations, and its resources and apparatus (both legal and illegal) are facts which make an evidentiary showing of its members' future actions highly improbable. In fact, a Communist might well get a passport long before he decides (or is ordered) to travel abroad; or he may not receive his instructions until he arrives abroad. Additionally, we rarely have reliable information as to where a Communist is going, much less as to what he may do in furtherance of the Communist conspiracy when he gets there. Our experience teaches us that Communists frequently misrepresent the places they intend to go, as well as the true purpose of their travel. In this connection, under section 201(c)(1) of H.R. 8329, the Department would not even be able to inquire of the applicant as to the purpose or length of his contemplated travel.

The Department believes that it presently possesses authority which section 103(a)(3) of H.R. 8329 purports to confer. Accordingly, the Department feels that the national security provisions of H.R. 8329 would have to be broadened to deal effectively with the Communist problem. It seems clear to the Department that H.R. 8329 would not supply the legislative authority found lacking by the Supreme Court in the *Kent-Briehl* and *Dayton* cases.

In this regard, it is noted that the bill passed by the House on August 23, 1958 (H.R. 13760) was, and H.R. 55 and H.R. 7006 introduced in this Congress are designed, in the Department's opinion, to supply the authority found lacking by the Supreme Court in the Communist area. H.R. 8329, however, contains no congressional findings as to the adverse effect which the issuance of passports to persons actively engaged in the furtherance of the international Communist movement would have on the national security or the conduct of foreign relations, a matter which the Department considers an important element in any passport legislation.

Moreover, section 201(c)(2) of H.R. 8329 specifically provides that the Secretary of State may not require the applicant to furnish any information with regard to membership in any organization which is not registered with the Subversive Activities Control Board, or with respect to which there is no final order in effect requiring such registration, in accordance with the provisions of the Subversive Activities Control Act of 1950. The fact is that no organization is registered and no final order is in effect requiring registration of any organization within the meaning of that act. The only organization which has been the subject of a petition by the Attorney General to require registration as a Communist-action organization is the Communist Party of the United States of America. However, the proceedings against the Communist Party have been in litigation for more than 6 years and a final determination appears unlikely in the near future. Consequently, section 201(c)(2) of H.R. 8329 would preclude the Department from requesting a passport applicant to furnish a statement even with regard to present membership in the Communist Party. The Department does not believe that reliance upon this as yet inapplicable provision of the 1950 act is the best way to meet the Communist problem in 1959.

In any event (despite the language of sec. 201(c)(2)) the provisions of section 103(b) would appear to repeal by inconsistency section 6(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 785) which makes it unlawful to issue a passport to a member of an organization registered or finally ordered to register as a Communist-action organization.

The Department feels that it would be desirable to have specific statutory authorization for the requirement of a sworn statement with regard to present or recent Communist Party membership. There can be no doubt about the deterring effect of such a requirement. The Department's experience under its previous regulations and the situation which has developed since the Supreme Court decisions of June 1958 show clearly that few of the hard-core, dangerous Communists actually applied for a passport when such a requirement was in effect.

The Department has maintained the position that any legislation directed at the Communist problem which requires full disclosure of information and confrontation of witnesses would be ineffective in operation and would likely create

an illusion that the travel of Communists would be controlled when such would not in fact be the case. H.R. 8329 recognizes this fact by the provisions made in section 304. However, the Department believes that the provisions of section 304 should also specifically provide for the situation where full disclosure would have a substantial adverse effect upon the conduct of foreign relations as well as on the national security, even though foreign relations is a basic element of national security. Our foreign intelligence depends in large measure upon close cooperation with other friendly governments, and we should not be placed in the dilemma of either having to prejudice our arrangements in this area, or to disregard reliable information received through other governments.

A difficult problem is posed by section 307 of H.R. 8329, especially subsection (d). This section would place the district courts of the United States in the position of determining whether the disclosure of particular information would have a substantially adverse effect upon the national security. Additionally, if the Department's suggestion as to section 304 is accepted, the court would also be in a position of determining whether the disclosure of particular information would have a substantially adverse effect on the conduct of foreign relations. Such a provision would require the judicial branch of the Government to substitute its judgment for the judgment of the executive branch in an area where the executive has long been held to have broad constitutional authority subject to very limited judicial review.

The Supreme Court's holding in the *Waterman* case that the Judiciary could not review determinations by the Chief Executive in an area where he has special responsibility, stated the situation cogently (333 U.S. at 111).

The President, both as Commander in Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the Government, executive and legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry."

The court of appeals in *Dayton v. Dulles* (102 U.S. App. D.C. 372) stated with respect to this issue (a matter not reached by the Supreme Court in reversing on other grounds) that:

"Obviously a determination that a certain person wants to go abroad for the purpose of advancing the Communist movement may depend upon information gleaned from diplomatic or consular sources or from other sources abroad important to our well-being. Determinations made by executive officials upon such information have traditionally, and by virtue of constitutional provisions relating thereto, been lodged in the Executive, and the confidence in which he has received that information has never been violated or even questioned by the legislative or judicial branches of the Government."

More recently the court of appeals in *Worthy v. Herter* (D.C., June 9, 1959) commented that:

"Judgment on what course of action will best promote our foreign relations has been entrusted to the President, not to the courts * * *. The courts are the least able of all organs of government to make such evaluations, and they are wholly without authority to make them."

The Department feels that there should be full disclosure of information and the sources thereof, except where such disclosure would adversely affect national security or foreign affairs to a substantial degree. In such instances, if a passport is denied, the applicant should be furnished a fair résumé of the information in order that he may have adequate notice of the matters involved and an opportunity to rebut them. The extent of and reasons for the nondisclosure should be included in the findings of the Secretary of State. The court should have authority to determine whether the findings based on the open record are supported by substantial evidence in that record, and whether the findings based on a résumé of evidence are supported by the résumé. However, the Department feels that when the Secretary of State asserts that he cannot spread certain information on the open record; explains with as much particularity as possible the reasons he cannot do so; furnishes a fair summary of the information; and makes specific

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findings of fact; the courts should rely on the Secretary's integrity and accept his statement.

The Department fully agrees that any comprehensive passport bill should contain a provision similar to title IV of H.R. 8329. It is desirable, in the Department's opinion, to have specific statutory authority for the imposition of area restrictions on the validity of passports generally; and to clarify by express statutory provision the Executive's power to restrain the travel of citizens to appropriately designated areas.

The Department believes that title IV should provide expressly either that the Secretary of State exercise the authority therein, or that the President may delegate such authority to the Secretary of State. However, it would pose no serious problem if the Congress decided to vest this authority in the President.

The Department would have no objection to a requirement that the reasons for area restrictions be published. However, it would not, in the Department's opinion, be consonant with the orderly conduct of foreign relations to require legislative authorization to maintain an area restriction in force for more than 1 year.

I hope that these comments will be of assistance to your committee in its consideration of passport legislation. If your committee or the staff desire information, the Department would be glad to comply with the request.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary.

DEPARTMENT OF JUSTICE,
Washington, April 16, 1959.

Hon. THOMAS E. MORGAN,
Chairman, Committee on Foreign Affairs,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN MORGAN: This will refer to your letter of March 25, 1959, to the Attorney General together with copies of various bills relating to passport control as to which you invited his comments.

Of the bills you enclosed, H.R. 55, H.R. 1919, H.R. 5575, H.R. 5948, H.R. 5951, H.R. 5954, and H.R. 5956 are substantially the same. For purposes of convenience, any comment made respecting H.R. 55 should be treated as applying as well to the similar bills mentioned above.

First, in our opinion, H.R. 55 is too narrowly restricted to Communist activities. It would be less vulnerable to attack if its base were broadened to include reference to the security and the conduct of the foreign relations of the United States. This may be accomplished by making minor word changes as follows:

Section 5, page 2, line 4: Add after "United States" the words: "and to the conduct of the foreign relations of the United States."

Section 5, page 2, line 15: Add after "United States" the words: "and seriously impairs the conduct of the foreign relations of the United States."

Section 6, page 2, line 24: Add after "United States" the words: "or seriously impair the conduct of the foreign relations of the United States."

Section 7 authorizes the Secretary of State to require an applicant not merely to affirm or deny under oath his membership in the Communist Party but also "to state the circumstances of any such membership or to state his activities in support of the international Communist movement."

It appears to us that the words in quotes above contemplate an inquiry too sweeping in scope and that adequate protection would be afforded to limit the affidavit to membership in the Communist Party. Moreover, the meaning of the words "supporter of the international Communist Party" may be open to the challenge of vagueness.

Accordingly, it is suggested that in place of section 7 in H.R. 55, there be substituted the following language:

"Each applicant for a passport, its renewal or extension, shall be required to subscribe to and submit a written statement duly verified by his oath or affirmation whether he is, or has been within 10 years prior thereto, a member of the Communist Party."

Although section 8 of H.R. 55 requires a hearing before denial of a passport, no specific requirements are spelled out. It would be preferable to establish in greater detail the notice and hearing procedures, as was done in the administration proposal.

on passports submitted to the Congress last year and introduced as S. 4110 and H.R. 13318.

By subjecting passport denials to judicial review on the record in the district courts of the United States, without any provision for maintaining certain information confidential, section 8 of H.R. 55 easily lends itself to the interpretation that Congress is requiring a trial-type hearing in which there is full disclosure and full right of confrontation. In other words, unless the State Department were willing to disclose its derogatory information, a passport could not be denied. By virtue of this requirement, the grant of authority to deny passports on the grounds provided in H.R. 55 would be of little practical effect in the present circumstances.

Section 8 also provides that judicial review shall be in the district courts of the United States. This probably means the district in which the applicant resides. Section 8 does not state against whom the action should be brought or the time within which action may be brought; the standards to guide the court in its review; or the relief which the court may grant. It would be desirable for review to be limited to the U.S. District Court for the District of Columbia so that the work of the Department of State and its officials who might be involved as witnesses be disrupted as little as possible. In this connection, we think section 304 of H.R. 13318 should be followed.

It is suggested that section 9 be added as follows: "The Secretary of State is authorized to prescribe regulations to carry out the purposes of the act."

If it is intended that the Administrative Procedure Act shall be inapplicable, a statement to that effect should be included as follows:

"The provisions of the Administrative Procedures Act as amended (5 U.S.C. ch. 9), shall not apply to proceedings under this title."

Consideration should be given to including a separability clause and effective date in the bill. Also consideration should be given to including a provision that the act shall continue in force until such time as the Congress or the President shall determine and declare that the activities of the international Communist movement are no longer such as to require the application of the act, or until the termination of the national emergency established by Presidential Proclamation No. 2914, December 16, 1950 (64 Stat.).

There remains for consideration H.R. 2468 and H.R. 5455 which are more elaborate than H.R. 55 and related bills.

In general, in the case of these bills also, the administration bill of last year, H.R. 13318, would appear to represent a preferable approach to the problem. More specifically, H.R. 2468 has broader standards than H.R. 55 to the extent that reference is made to the conduct of foreign relations. It could be further strengthened by including as an additional basis for denial of a passport that the person's activities abroad would be harmful to the security of the United States. Moreover, H.R. 2468 contains no provisions for a hearing and other procedural requirements, which in our opinion should be included in a passport control bill.

H.R. 5455 is subject to the objection that it is substantially limited to Communists and persons affiliated with communism. Under it, like H.R. 55 and related bills, denial of passports would not be based upon the conduct of foreign relations. While the passport procedures set up in the bill would appear to permit the use of information received from intelligence sources, it is not explicit on that score. In our opinion, the hearing procedure set forth in the administration bill, H.R. 13318, 85th Congress, 2d session, in all respects provides a better basis for court test.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely,

PAUL A. SWEENEY,
Acting Assistant Attorney General, Office of Legal Counsel.

DEPARTMENT OF JUSTICE,
Washington, June 2, 1959.

HON. THOMAS E. MORGAN,
Chairman, Committee on Foreign Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H.R. 6537) a bill to provide for the denial of passports to persons knowingly engaged in activities intended to further the international Communist movement.

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Since H.R. 6537 is identical to H.R. 55 as to which detailed comments were submitted to you on April 16, 1959, it would be appreciated if you would please consider the comments respecting H.R. 55 as equally applicable to H.R. 6537. The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely,

PAUL A. SWEENEY,
Acting Assistant Attorney General, Office of Legal Counsel,

DEPARTMENT OF JUSTICE,
Washington, D.C., June 17, 1959.

HON. THOMAS E. MORGAN,
*Chairman, Committee on Foreign Affairs,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H.R. 7006) "to provide for denial of passports to supporters of the international Communist movement, for review of passport denials, and for other purposes."

In my opinion, the revised draft would be strengthened considerably if section 2(a) were not restricted to Communist activities, and if its base were broadened to include language expressly tying the authority to deny a passport where harmful to the security of the United States and where it would seriously impair the conduct of the foreign relations of the United States. While section 2(a) refers to the findings of section 1 which contains the broad base, the core of the bill remains the denial of passports to those engaged in activities for the purpose of furthering the international Communist movement.

Consideration should be given to having the provisions of the proposed act continue in force "until such time as the Congress or the President shall determine and declare that the activities of the international Communist movement are no longer such as to require their application," rather than to have the act depend, as it does in section 4, upon continuing in force the proclamation of national emergency issued upon the initiation of the Korean conflict. It is possible that the Korean conflict may be resolved in the future and the Presidential proclamation of December 16, 1950, may be revoked, but the peril created to the Nation's security by the Communist conspiracy may not be lessened in any way.

It may be noted that the bill is aimed solely at individuals affiliated with the Communist movement. Consideration should be given to the question as to whether travel by subversives who are not affiliated with the Communist movement should not be restricted, too.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely,

PAUL A. SWEENEY,
Acting Assistant Attorney General, Office of Legal Counsel.

[From the American Legion Magazine, September 1959]

PASSPORTS TO TROUBLE

(By John W. Hanes, Jr., Administrator, Bureau of Security and Consular Affairs,
U.S. Department of State)

I don't know exactly how many members the Communist Party of the United States now has. The estimates run from 10,000 to 20,000. But whatever the number, each and every party member as of today can obtain a passport from the Department of State. The exceptions are those rare instances in which the applicant happens to be ineligible for some other reason, such as being a fugitive from justice.

Since this dangerous loophole in our laws was shown to be open last year, many notorious American supporters of the Communist movement have traveled abroad to campaign against us on the world battlefield. Their names and their activities are matters of public record.

What do they do when they get abroad, these "Americans" now happily traveling on their U.S. passports? Let James Jackson, secretary of the national com-

mittee of the Communist Party, U.S.A., give part of the answer in his own words. He went to Moscow this past February and there addressed the Communist Party of the Soviet Union. According to Radio Moscow, Jackson said: "Communists the world over will welcome the ideological contributions and profound insight in Comrade Khrushchev's report for the solution of a number of problems of the struggle for peace, democracy, national freedom, and socialism * * *. We are building our party in the firm principles of Marxism and Leninism * * *. On the occasion of the 21st Congress, the Communist Party of the United States extends its warmest fraternal greetings to the great CPSU which, boldly applying and developing the principles of Marxism-Leninism, is leading the Soviet people to even new socialist accomplishments and onward to communism."

At present we are forced to issue passports to people such as these—passports which not only permit, but greatly aid, their travel to and in foreign countries. Their passport clothes them abroad with all the dignity and protection that our Government affords U.S. citizens. And yet the dedicated purpose in life of every Communist is to destroy our Government and our freedom.

Surely this situation is a perversion of the liberty which our Constitution and our laws are meant to guarantee us.

Our own Government has long recognized how important American passports are to the Communist conspiracy. The Communist underground has for years maintained workshops devoted to the wholesale forgery and falsification of passports and other documents. However, genuine American passports were particularly prized at intelligence headquarters in Moscow, according to a former chief of Soviet intelligence in Europe.

During the Spanish Civil War Communist leaders assiduously collected the passports of the several thousand Americans in the international brigade, and the bulk of these passports eventually found their way to Moscow for alteration and possible use by Soviet agents. In fact, so many American passports were collected from this source that, as a countermeasure, the U.S. had to replace every outstanding passport in the world with a new document.

In 1949, 11 members of the national board of the Communist Party, U.S.A., were convicted of conspiring to advocate the overthrow of the U.S. Government by force or violence. In 1950 American Communists were actively supporting the enemy position in the Korean war. Congress, recognizing these dangers, passed the Internal Security Act and found that: "* * * travel of Communist members, representatives, and agents from country to country facilitates communication and is a prerequisite for the carrying on of activities to further the purposes of the Communist movement."

Congress also said that Americans who participate knowingly in the world Communist movement "* * * in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement."

Yet allegiance is the touchstone of the right to a passport.

The Secretary of State, charged by law with the issuing of passports, could hardly have ignored these congressional findings. In 1952, Secretary Acheson issued regulations establishing the criteria for refusing passports to Communists and Communist supporters.

The publication of these regulations triggered a violent attack by the Communists through their press and through the courts, utilizing every device of law and procedure. Their clever campaign gained respectability because many sincere persons who have no sympathy whatever with communism became disturbed by the argument that the regulations permitted the Secretary of State arbitrarily to restrict a citizen's rights. These were the regulations which in 1958 the Supreme Court struck down by finding that they had not been specifically authorized by Congress.

I think it might be well to put into perspective exactly how these regulations operated and what their practical effects were. To do so, I should like to present some statistics on the numbers of Communist supporters who were refused passports under them and the number of Americans who received passports. For the 2 calendar years preceding the Supreme Court's decision (1956 and 1957) 1,145,000 passports were issued or renewed. During that same period the Passport Office limited the passport privilege of 51 persons because of Communist grounds. Every one of those persons had access to an elaborate and impartial appeal mechanism, and many of them utilized it. From the time this mechanism was set up in 1952 until the Supreme Court's decision in June 1958, the Secretary of State—and it must be the Secretary personally—refused passports to only 15 persons on Communist grounds after full hearings. A number were granted passports after hearings; some others, of course, did not contest the Passport

Office's denial, and undoubtedly many active Communists never bothered to apply at all, knowing they would be scrutinized and required to make a sworn statement about Communist Party membership.

I believe it is important to remember these figures when statements are made about the "arbitrary" action of the Department in passport matters.

Much of the meaning of even the very few but very important refusals became academic, of course, in June 1958, when the Supreme Court's ruling was handed down. Since then, as we anticipated, there has been a flood of applications from persons with records of Communist affiliations or activities. Some of them had previously been denied passports, but many had never previously applied. Many we know a great deal about, but the Department of State is no longer in a position even to inquire, much less investigate, whether any such applicant is a Communist Party member or how dangerous he may be. There is quite a difference, for example, between a known courier and a relatively harmless fellow traveler.

This flood of applications continues today. The Communists are getting passports while they can. Naturally, in all these cases the Department's previous policy has had to give way and passports have been issued to all these people.

Immediately following the Supreme Court decision, Secretary Dulles sent Congress a draft bill to provide the specific legislative authority which the Court held was lacking. He wrote to the Congress:

"I think there can be no doubt in anyone's mind that we are today engaged for survival in a bitter struggle against the international Communist movement * * * [This] movement seeks everywhere to thwart U.S. foreign policy. It seeks on every front to influence foreign governments and peoples against the United States and eventually by every means, including violence, to encircle the United States and subordinate us to its will. The issuance of U.S. passports to supporters of that movement facilitates their travel to and in foreign countries. It clothes them when abroad with all the dignity and protection that our Government affords. Surely, our Government should be in a position to deny passports to such persons."

President Eisenhower urgently endorsed the legislation, saying: "Each day and week that passes without it exposes us to great danger."

What must such legislation do?

Again, the President has expressed it well. He said:

"In exercising these necessary limitations on the issuance of passports, the executive branch is greatly concerned with seeing to it that the inherent rights of American citizens are preserved. Any limitations on the right to travel can only be tolerated in terms of overriding requirements of our national security, and must be subject to substantive and procedural guaranties."

Simply stated, what we need is legislative authority which will allow the Secretary of State to deny passports to hard-core supporters of the international Communist movement. We believe such denial should occur under due process of law, including judicial review.

We do not seek statutory passport authority to stifle criticism of this Government or its policies. We do not believe that the passport should or can be used to restrict the movement of people who hold political, social, or economic opinions which are not of the orthodox American variety.

We do not seek or want authority to deny passports to any whose travel or activity abroad is merely an embarrassment to our country. I believe that the United States is strong enough to survive embarrassment if we must.

Neither do we wish to penalize loyal Americans who at one time, before the nature of the Communist conspiracy became as crystal clear as it is today, may have sympathized with Communist theories or even belonged to Communist organizations in this country.

All we seek, and what I feel we must have, is the capacity to protect ourselves by denying passports to those relatively few hard-core, active Communist supporters who are not ordinary American citizens and whose travel abroad constitutes a danger to the United States.

In the case of passports "due process" means that the Secretary of State cannot be arbitrary or capricious but must have sound reasons for restricting an individual's right to exit. It means that he must tell the individual the reasons for his action in sufficient detail and under such circumstances that the individual may have an opportunity to show the reasons untrue. Such circumstances should include a full hearing and review within the Department of State and ultimately, of course, the right which now exists to appeal to the courts.

There is one other essential of passport legislation which is much misunderstood, and that is the necessity for the Government to be able to utilize confidential information as part of the basis of its decision.

I can say bluntly that any legislation concerning denial of passports to Communist supporters would be meaningless and would not achieve any purpose if it prohibited the Government from utilizing confidential information. Almost without exception, dangerous cases involving communism also involve confidential information and investigative sources. Indeed, the more recent and meaningful our information is, the more likely it is that it has come from current confidential investigative sources within the Communist movement.

The Government has a legitimate and overriding interest in maintaining the security of these investigative sources and methods. If faced with the unpalatable choice of exposing and thereby destroying a valuable and continuing source of information about the activities of the Communist conspiracy or issuing a passport to an individual member of that conspiracy, the Government has no alternative but reluctantly to issue the passport as the lesser evil.

Some people feel that the use of confidential information in such cases means using vague and unsubstantial gossip or allegation that will not stand the light of day. This is nonsense. In the first place, if one is prepared to believe that the Secretary of State, who must personally decide passport appeals cases, would actually base a considered decision upon anything less than substantial and corroborated evidence, then one must believe that our country's security is in far greater danger than from the capricious denial of passports. In the second place, confidential information is almost always a small part of any total case, although usually essential because of the clear proof it provides. Most of every case can be fully and publicly disclosed.

Beyond this, however, we believe, based on a careful review of the Communist cases we have had in the past, that in every case the Government can provide a fair summary of even the confidential information, both to the applicant and to the courts. Such a fair summary would include all the pertinent reasons for which the passport is denied and would exclude only those details required to protect confidential sources of information.

I would have no objection to any legislation requiring the Government in all cases to provide such a fair summary of the content of any confidential information relied upon.

One other thing should be clear. What we are talking about is not a criminal proceeding in which someone is being tried or punished for past actions. Instead, it is an administrative process which attempts to predict someone's future course of action, if he travels abroad, and to balance its potential danger to the United States against the desirability of facilitating the travel and giving him protection while he is performing it. These are services which the Government should extend to its citizens, but they are not inviolable rights which the individual can demand no matter what the menace to society may be.

Even having said this, however, much about this subject remains repugnant to Americans. The use of "confidential information" in any kind of proceeding, judicial or not, and indeed any sort of governmental restriction, whether on travel or passports or any other activity of the individual—these are things which we will never like and which, I hope, we never accept apathetically.

Here, however, I believe we must face squarely one fact which is inherent in every aspect of the subject of passports and travel restrictions: That is, that our Nation although not technically at war, assuredly is not at peace. We face, almost on a daily basis, actual threats to our national security and to our very existence which very clearly are the equal of any threats we have ever faced in peace or war. One need only think of the implications of Berlin today or the countless crises of the past decade to realize how perilous our situation is.

This uneasy condition of "not peace, not war" is something entirely new to our experience. It places a tremendous strain upon our governmental and constitutional institutions, for it blurs lines which had previously been considered sharp and clear.

It used to be that when our Nation was not at war it was truly at peace. Certain rules obtained and governed our lives in peacetime. These rules were evolved over a century and a half by and for a free people who since the earliest days of their history had been faced by no serious external threat to their freedom or their national existence. Occasionally war came, and there was a clear line of demarcation. War was declared and waged with certain formalities. During wartime certain special rules obtained because the Nation temporarily required the subordination of individual desires to the overall national effort. These special rules, while repugnant, were considered tolerable for the limited duration of the war. When the war was over, other prescribed formalities occurred; the

Nation was at peace again, and the special wartime rules, which were usually incompatible with complete constitutional freedom, were dropped.

This sharp demarcation between peace and war does not exist today. International communism has thrown away the rule book. It does not consider itself ever at peace. It is always totally mobilized to advance its aim of world domination. It does not recognize any of the accepted rules of international or legal or human conduct except when, and only for as long as, those rules may suit its purpose.

This situation creates an unprecedented threat both to our liberty and to our very existence. Our response must include a recognition of these changed circumstances, or we risk the loss of existence and liberty together.

The threat, moreover, will continue to exist, perhaps for many years in the future. This makes it imperative that whatever response we do adopt must be one that we can indefinitely sustain and without endangering the strength or the integrity of our basic and cherished institutions which we are seeking to protect.

I believe that such a response is possible to a free people. I believe that our institutions—our Constitution, our laws and our form of government—are strong enough and flexible enough to adjust to these changed circumstances, just as they have adjusted to changes in the past.

I have tried to illustrate what I mean by suggesting, in the limited but important field of passport policy, a procedure which meets these criteria. It meets, I believe, the most pressing requirements of national security. It does so by law and under the Constitution. I think, for the reasons I have given, that adequate passport legislation is essential to our security. But let me be very clear. I do not believe that such legislation will eliminate all the dangers which we face from the Communist conspiracy or even all those which it is intended to counter.

I do believe that adequate passport legislation is a necessary and integral part of the screen of weapons we have raised against the conspiracy and that it will seriously cripple the effectiveness of that conspiracy.

I do believe, finally, that all our weapons together, wisely and effectively used, will contain the internal menace of the Communist conspiracy within tolerable limits while our military strength deters its worldwide menace and our foreign policy seeks to replace its threat with a just and durable peace.

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